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Mr. *Iohn* Perkins,

Sometimes Fellow of the Inner
TEMPLE.

Treating of the Laws of
ENGLAND.

Translated out of French into English
for the benefit of young Students
and others. An. Dom. 1657.



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GRANTS.

CHAP. I.

F
 As much as unto a Grant, a
 Grantor, Grantee, and a
 thing granted are requisite
 and necessary: First, there-
 fore it behoveth to shew what
 persons may grant and what
 not; and of such persons as may grant, by
 what names they may grant: And then what
 persons may be Grantees, and by what names
 they may be Grantees; And then it behoveth
 shew of the thing to be granted; And as to
 that, first, it shall be shewed what things shall
 be granted by deed, and what without deed:
 And then what things a man may grant or
 charge: and then what things shall passe by the
 consent of other, &c.

P. 13. b. 8
12.

And to know what persons may grant,
 and what not, it is to be understood, that some
 grants of some persons are void; some grants
 of some persons are voidable by themselves,

and their heires, and by those who shall have their estates for ever. And some grants of some persons are voidable by the Grantors only during certayne time, and some grants of some persons are voidable after the death of the Grantor by the heires of the Grantors, and not by the Grantors, or by any other person during the life of the Grantors, &c.

H. 14. h. 8.
16.

3 And know, that the grants of all persons in Law, as Monks, Friars, and Nuns professed, and such like others are void if they be not made by the Sovereignes of the houses, or by matter of conclusion, or otherwise that it be in special cases, and therefore if a Monk, Friar, or Canon professed, who is

M. 2 H. 3.
5.

sovereigne of the house, grant unto me an annuittie by deed poll, the grant is void notwithstanding that he be de-raigned afterwards,

H. 32. h. 6.
31.

made Sovereigne of the said house, or of another house: or created a Bishop, &c.

4 And if a commander of the Hospital of Saint Johns of Jerusalem in England, grant a rent charge issuing out of land which he has in his commandry without the knowledge of the Prior, the grant is void, &c. But if a Monk or a Friar, &c. by the commandement

P. 10 E. 4.
4.

the Abbot or Prior who is sovereign of the house and in the name of the Abbot or Prior may make a grant, the same shall be good, the same be delibered as the deed of the Abbot or Prior by their assent, &c. If I. S. being

14 H. 4. 31.

seised of an acre of land in fee, joyn in the grant of a Rent issuing out of the same acre, with a Monke, the same is void as to the Monke, and good against I. S.,

H. 8. h. 5. 6.

5 But if a Monke or other Religious man

the farmour unto the Kings Majestie, and made
 sale of a bargaine of a thing concerning his
 wife, such sale of bargaine is good, and up-
 on that he shall have a Quo minus against the
 vendee of Bargaine in the Exchequer, &c. M. 2. h. 4. 7.

And if a feme covert grant an Annuitie M. 1. h. 5.
 by deed, the grant is void. And if a man be 12.
 seized of Land in the right of his wife, and his
 wife grant a rent issuing out of the same
 lands, without the knowledge of the husband,
 his grant is void, and so it is notwithstanding
 that the husband had consaunce of it, if
 he made and delibered without his assent, or
 with his assent, if it be made in the name of the M. 9. E. 8.
 wife and not in the name of the husband. And 28.
 notwithstanding the husband were abroad
 out of the Countrey at the time of such grant
 made and delibered, so that it is not known
 whether he be alive or dead. yet such grant is
 void if the husband be living, insomuch as if H. 4. h. 4.
 the grantee by force of such grant enter into the 13.
 land and distraine, the husband at his return H. 2. h. 7.
 shall have for his entrie and distresse an action 15.
 of trespasse.

But if a single woman be an executrix,
 and she take a husband, if all the debts of the T. 13. E. 1.
 testator are satisfied and paid, she may deli- Exec. 119.
 ver the legacies of the Testator out of the goods P. 18. h. 6. 4.
 of the Testator in despite of her husband. And
 if the debts and Legacies of the Testator be
 satisfied and paid, she may give away the goods
 of the Testator which remaine to pay for the
 funeral of the Testator in despite of her husband.
 But such delivery of Legacies or gift to pay
 for the soul of the Testator, by the wife, before
 the debts of the Testator are satisfied and
 paid.

paid, is void, in so much that the husband shall have thereof an action of trespass, for that it is but a wasting of the goods of the Testator; if it be so that the goods of the Testator which remaine, will not extend to satisfie the debts of the Testator, &c.

T. 47.E.3. 8 And if there be a difference betwixt the husband and the wife, by reason whereof certaine lands of the husband are assigned unto his wife by the friends of the husband, and by his assent, and the wife grant a rent charge to be issuing out of the same lands unto a stranger, the grant is void, &c.

18.

9 If a single woman, being seised of the Carve of Land, cause a deed of a grant of a rent charge to be issuing out of the same Land to be made, and she deliver the same deed unto a stranger as an Escrowle, upon condition, that if the Grantee goe to Rome and returne back againe before the Feast of Easter then next following, that then he shall deliver the same Escrowle, as her deed unto the Grantee; the woman marieth a husband, and before the Feast of Easter, and during the coverture, the Grantee go to Rome, and returne back, and the stranger delivers the Escrowle unto him as the deed of the woman. This grant is good, notwithstanding that the husband were seized of the Land in the right of his wife, before that the Grantee took effect, as the Deed of the woman at the time she was married to the husband: and the cause & reason is, Because that unto some purpose it shall have relation unto the time from the first delivery, that is to say, when it was delivered as an escrowle, insomuch that if the wife

shall such case have infeofed a stranger of the said land, before the condition performed, and afterwards the Grantee had performed the condition, and the stranger had delivered the Escrowle as the deed of the woman unto the Grantee, the Feoffee should have holden the lands charged, &c. because that at the time of the deliberie of the deed as an escrowle, she was a single woman.

10 But in the said case, The grantee shall not have any Rent by force of the said grant, before the last deliberie, that is to say, when it took effect as the deed of the woman, and so to such purpose and intent, shall not have relation unto the first deliberie, S. when it was delivered as an Escrowle, &c.

11 But in the same case, if the woman had been married at the time of the deliberie of the deed as an Escrowle, and her husband died, and the Grantee performe the condition, and the stranger deliver the grant unto him as the deed of the woman; notwithstanding that the grant is void to charge the woman, Causing the matter. See moze of this in the Chapter of Deeds, and so it appeareth that some grants of these some persons are void, &c.

12 Know, that some grants of some persons are voidable by themselves, by their heirs, and by those which shall have their estates for ever. And as to that, know that it is a common knowne Rule. That all such gifts, grants or deeds made by an infant, which do not take effect by delivery of his hand, are void; But such gifts, grants or deeds made by an infāt by matter in deed, or in writing which take effect by delivery of his own hand are voidable

Grants voidable by himselfe

able by himfelfe, and his heires, and by thofe which fhall have his eftate.

P. 18. E. 3.
2.
P. 7. E. 4. 5.
 13 And therefore if an Infant make a deed of feoffment, and a letter of Attourney unto a ftranger to make liberie of feifin, and make liberie of feifin by force thereof, he fhall be taken for a diffeifor. And if an infant being feifed of a Carbe of Land, grant a re charge to be iffuing out of the fame Carbe deed, and the grantee diftraine, he fhall punifh him as a trefpaffer, notwithstanding that the infant did deliver the deed with his own hand. But in fuch cafe the infant nor his heire, nor his feoffee, cannot againft fuch a deed in pleading fay, That he did not grant by the deed, for that the deed is not void, but is voidable; as to fay, that the grantor was without age, &c. at the time of the grant, &c.

T. 25. E. 3.
45.
 14 If an infant give a horfe, and doe not deliver the horfe with his hand, and the donor take the horfe by force of the gift, the infant fhall have an action of trefpaffe. But notwithstanding that maxime, If an infant be executor, the payment of the debt of the testator by him is good and effectual, &c. If an infant fhall be bounden by all acts done by him during his nonage, which acts are for his advantage, if not in fome fpecial cafes. And therefore if an infant at the yeares of difcretion make a Bond for his neceffary meat and drinke, or for his neceffarie apparel, or for his fchooling, he fhall not avoid the fame, Caput, and fo it fhall be in like cafes.

P. 16. h. 6.
Grant 12.
 15 And a grant made by an Infant of the age of 14 yeares of a Free Chappel fhall be good and effectual, becaufe that he himfelfe

GRANTS.

7

he cannot have it; Quere, if the Infant in
chafe be but of the age of 14 yeares, what
all become thereof because he hath not discre=
m. And an Infant at the age of 14 yeares
present to an Abbotsolon, which apper=
s unto his presentment, and it shall be
nd, because he himselte cannot have it, and
cable that after the six moneths past the O=
ary shall present for Lapps, &c.

16 All Feoffments, Leases, Gifts or Grants
e by durenesse are voidable (and not void
the parties themselves,) by their heires, and
those who have their estates, &c. And there=
e if a man seised of lands, grant a rent
arge by durenesse, and after lease the lands
life or yeares, unto a stranger, and the
antee distraine for rent behind, before the
ase, or after the lease, the lessee shall have an
ion of trespassse: So shall have the heire of
grantor, if the land descend unto him,
not know, that alwayes it behoobeth, that if
y shall have trespassse, that they be seised in
of the land or tenements where the tres=
se is supposed, at the time of the trespassse
ne.

17 If a man seised of a Carbe of land, gibe
same in taylor by deed, and make a letter
Attourney to make libery of seisin, and all
done by durenesse of imprisonment, and
rie of seisin is made by force thereof, now
this a disseisin unto the donor: but that
not probe that the deed of Feoffment, and
letter of Attourney are void, for then the
nor might traverse them, and that he cannot
&c. And know that the imprisonment
ght to be made for the making of the deed, &c.

P. 41. E. 3.

9.

8. Aff. pl.
25.

11 R. 2.
dures, 13.

M. 7. E. 4.
21.

*Grants voidable for a
certain time.*

M. 18. F. 4.
13.

M. 7. h. 7. 4.
23.

17. Aff. pl.
17.

M. 17. E. 3.
52.

*Grants voidable
after the death
of the grantors.*

18 And therefore if a man, &c. imprisoned upon an execution of a Statute merchant now a grant made by him unto a stranger, he be assistant unto his deliberance is void and not voidable, because that he was not imprisoned for the same cause. And if a man threaten to murder me if I do not grant to him an Amptity of twenty shillings, for feare of death I grant unto him an Amptity of twenty shillings; now is this grant voidable. But if a man grant one mittle for a threatening of carrying away his goods, this grant is not voidable, for the threatening, because he may have an action against them, if they be taken, &c.

19 Some grants of some persons are voidable by the grantors only during a certain time; And if an Infant grant a rent by writ of Error, this grant is voidable by himselfe during his nonage by writ of Error, but if he be of age and avoid it during his Nonage, it is good forever, and notwithstanding that he die during his nonage before that he hath avoided it, his heire shall not avoid it. Quere if the writ of Error be depending the writ of Error.

20 And if a man be seised of lands in right of his wife, and the wife as a feme sole without her husband grant a rent by fine issuing out of the same land, this grant shall not bind the husband during the coverture. But if the husband die before he and his wife shall reverse the fine by error, the wife shall be bounden by this grant.

21 Some grants of some persons are voidable after the death of the grantors, by the heirs of the grantors, and not by the grantors.

GRANTS.

9

by any other person during the life of ^{p. 12. E. 4.} the grantor; And therefore if a man Non ^{8.} sanz memoria, being seised of a Carbe of Land, grant a rent issuant out of the same Land, and die, and his heire enter and the grantee distraine for the rent behind, the heire shall have an action of trespassse: But if the grantee had distrained in the life of the grantor for the rent behind, the grantor should not have an action of trespassse, for he cannot avoid ^{H. 39. h. 6.} deed by disabling of himselfe. ^{42.}

12 But if a man being of good memorie make a Charter of Feoffment of certaine lands whereof he is seised, and make a letter of Attourney at the same time to make Liberie of seisin, but before deliberie of seisin; by some sicknesse he become mute, and by signes which he makes, it appeareth, That Liberie of seisin shall be made, by force whereof liberie of seisin is made, that is a good feoffment.

13 But if a letter of Attourney to make Liberie of seisin is made of certaine Land, by a man of unsound memorie, and the Charter of feoffment of the same land was made before when he was of good memorie, and then liberie of seisin is made by force of the letter of Attourney without other assent of the feoffor, and the feoffor die, now his heire may ^{17. Af. pl.} enter upon the feoffee, but the feoffor him- ^{17.} selfe in his life cannot enter.

14 All matters of Record to which a man of not sound memory is partie, his heire shall not avoid for the cause that his father, &c. was Non sanz memoria, &c. And therefore if a man Non sanz memoria grant a Rent by fine, or be bounden

bounden in a recognisance, &c. his heire shall not avoid such matter, by saying that his father &c. was Non sane memoriz.

25 And know, that if a man be borne dumb but can well heare, such a man at full age may make a gift, by delibery of his hands by signes, and without delibery by signes. But a man that is borne dumb and deafe may make a gift, if he have understanding, But it is hard that such a person should have understanding. For a man ought to have his perfect understanding by his hearing, yet diverse persons have understanding by the sight, &c. And a man borne dumb and blind may have understanding: But a man that is borne blind, deafe, and dumb, can have no understanding, so that he cannot make a gift or a grant.

26 A Bastard may make a grant as any other person may. And a man attainted of felony or murder, &c. may make a grant of a Rent or Common, or a Feoffment, &c. 8. Aff. p. 25. and the same shall bind all persons but the King for his time, and the Lord of whom the Land is holden, when his time shall come.

27 And as unto this matter. Know the Attainder of Felony, or of Murder, &c. is commonly said in three manners, that is to say by utlagery, by verdict, and by confession. But upon every of them judgement ought to be given, otherwise it shall not be said an attainder.

28 And know, That Attainder by utlagery shall have relation unto the Exigent as well to lands and tenements, so that a feoffment

the Land or grant of a rent before the execution awarded by him that is attainted in such manner is good: And Attainder by verdict shall have relation unto the time of the Felony committed according to the supposal of the Indigment, as unto lands and tenements; and so shall have an attainder by conviction.

But all the attainders as unto the goods shall have relation but unto the Judgement 41 Aff. p. 13.

So that, A gift made of goods by a man before the judgement is good. Also

there is an Attainder by Act of Parliament. And a man outlawed in trespass may take a gift of his goods, but the same is void to bind the King, but good to bind the parties, and a gift, grant, or feoffment by the King's Willaine is void to bind the King, Quia nullum tempus occurrit Regi. But the same is good to bind the parties himselfe. But a gift of

goods of the Willaine, of a common person made by the Willaine, before seizure of a Lord, is good against all persons, for the title of the Lord in the goods of his Willaine, doth not commence but by the seizure, and the title in the Lands of his Willaine, doth begin by his entry, and of Rent, Reversion, common, Advowson of a Church by claim, and of common issuing out of the Land of the Lord by extinguishment, and of a Rent issuing out of the Land of the Lord by Retainer, or Extinguishment. And if my Willaine have a Willaine, I cannot have him by seizure.

And yet, if Lord and Tenant be by knight's service, and the Tenant die, his

heire

30 H. b. 5.

35 E. 3.
villain 12.

II. 14. h. 8.

22.

heire within age, and a stranger take him way; the Lord shall have a ravishment of him notwithstanding that he never seised the land, and the reason is because that the title of Lord in the Ward doth begin by the death of his Tenant, and the body of the Infant transitorie. But the Lord shall not have writ of Electione Custodie for the Land fore entrie, because that the Land is transitorie.

31 And know, that the grants of diverse persons cannot be good in perpetuities without the assent of others by way of grant, confirmation or otherwise, &c. As the grant of a Deane without the Chapter, and the grant of an Abbot without his Convent, and the grant of the Mayor without the Communitie; so it shall be of a Master of a Colledge, and of all others which are bodies politicke; and they shall be sealed with a common seale.

P. 21. E. 4.
13.

32 And all those which are recited above shall be a joynt possession with their head, as the Chapter with the Deane, &c. Grants made by such persons to charge their possession, which possession they have in common is not to charge the beasts of other persons with distress, but his owne. As put the Case if a Deane grant a rent issuing out of a land which he holdeth in common with the Chapter, now by this grant, the Cattle of the Chapter are not lyable, to distress. In that case, if the Deane be created Bishop, the grant is determined as to charge the possession. But if the Grantee hath not charged upon the land, as upon a land charged unto his distress in a Court of Record, he shall charge

GRANTS.

13

39 E. 3. 31.

charge the person of the Bishop in a writ of
 moiety, if the grant be not made under a spe-
 cial proviso that it shall not charge his person.
 33 But if an Abbot grant a rent charge in
 his owne name without the assent of the
 convent, and the Abbot is deposed, and a-
 nother Monke is made Abbot, and he who
 deposed is created Bishop: Now the Gran-
 t shall not charge his person in a writ of an-
 nuity, because that when he was deposed he
 was a dead person in Law, and not of abili-
 ty to bring any action, or to be sued in such
 a writ, and so by his deposing the grant was de-
 termined to charge his person, and also to
 charge the possession. But if the grant were
 made in fine, the possession shall be charged: But
 when the Deane was created Bishop, he re-
 mained alwayes of ability to be sued, &c. And
 the Abbot after the grant and before he was
 deposed had been created Bishop, then the
 convent might well charge his person in a
 writ of Annuity, *Causa pater*, &c.
 The grant of a Rent to be issuing out of
 Glebe Land by the Ordinary only, is void
 to charge the Glebe Land of the Parsonage, H. 33 E. 3,
 and such a grant made by the Patron alone
 is void, to charge the possession of the Glebe
 Land, but such a grant made by the Parson
 alone, is good to charge the Glebe, during
 of the time he is Parson. But if the Parson
 assigne his Benefice unto another man who
 is instituted and inducted, such grant is de-
 termined as to charge the Glebe land, &c. But
 not shays he may charge the person of the Gran-
 t in a writ of Annuity, &c.

M. 16. F. 3.
 Abbe. 8.

H. 33 E. 3,

4.

But the Parson, Patron, and Ordinary
 by

by their Grant may charge the Glebe in perpetuities. And the Abbot and Convent may charge the lands of their house in perpetuities; so may the Deane and Chapter the Major and Communaltie. Mutatis mutandis, And the Patron and Ordinary time of vacation may by their grant charge the lands of the Parsonage, &c. And whether other persons may grant who are not here mentioned nor mention made of them.

By what persons persons may grant
3 E. 4. 14.

36 Now it is to shew, by what names persons who have abilitie to grant, may grant. And as unto that, know, That name of the Grantor is not put in the deed for any other intent, but to make certainty of the Grantor, And therefore if the Duke of Suffolke by the name of Duke of Suffolke, without his name of Baptisme, grant Annuity Rent, Common, Reversion, &c. it is a good grant; because there are no more Dukes in England of that name. And a grant of annuity by an Abbot, by the name of the foundation without his name of Baptisme is good if there be not any more Abbots in England of the same name of Foundation, so as the certainty may be known who is the Grantor.

37 If Father and son are of one name and the Father grant annuity by his name without any addition, this is a good grant, for where there is no addition, it shall be intended a grant of the father. If the sonne in such a grant give an annuity by his name without any addition. (I conceive) such grant is good. For if the grantee bring a writ of Annuity against the sonne, he cannot helpe himselfe.

by any meanes, for if he deny the deed, it shall
be found against him, &c.

38 But if I. S. grant an Annuittie by deed,
and in the deed the surname, scil. S. is, but not
his name of Baptisme, this grant is not
good: and if I. S. grant annuittie by his con-
trary name of Baptisme, viz. by the name of
S. some think this grant is not good, because
the deed of Thomas cannot be the deed of
John, (for a man cannot have two names of
Baptisme,) and so they conceive the grantor
may deny the deed. 3.h.6.26.

39 And some are of contrary opinion, for
when they are at issue upon the deed, the plain-
tiffe may give in evidence the day, yeare, and
place, where the partie delivered the same as
his deed, &c. then the grantor hath not any
thing to helpe him, but to say, that his name
is John and not Thomas, and so not his deed.
Now they say, That the plaintiffe may de-
pend upon this evidence, forasmuch as he hath
not gain-sayed the delivery of the deed, as his
adversary say, that he shall be concluded to
say that his name is other, but as the deed doth
prose. Ideo Quære. M. 9. E. 4. 43.

40 But if I. S. reciting by his deed that his
name is I. S. by the same deed grant Annuittie
in the name of Tho. S. this is a good grant, E. 3. Trin.
the writt shall be brought upon the whole
deed. And if Alice at Style reciting by her
deed that she is a feme covert, (and in truth
she is a feme sole) grant annuittie, &c. it is a
good grant, for that is but a void recitall, and
the grantee need not put that in his writt, and
it cannot be a conclusion to him when he
pleads the deed. And so shall it be if I. S.
knight E. 3. Trin.

knight, reciting by his deed that he is
man, grant annuitie, &c.

9 E. 3. 14
12. 1, 2.
csts 58.

41 But if a feme covert reciting by her
that she is a single woman, grant annuitie,
this is a void grant, for she shall not be con-
cluded by this recitall, &c. But if a man
who is baptised by the name of John, by
same name at his full age grant annuitie,
afterward is confirmed by the name of
Thomas, now his name of baptism is changed,
and yet the grant is good; and if a
woman grant to me annuitie, and afterward
taketh a husband, now she hath lost her
name, yet the grant is good.

27 E. 3. 85.

42 The grants of such persons which
good without name of Baptisme, (notwith-
standing that such persons name themselves
by contrary names of Baptisme,) yet the
grants shall be good. And therefore if an
Abbot grant common of his lands by the name
Richard Abbot &c. and his name is Robert,
this is a good grant, if there be not any
Abbots of the same name of foundation.
Such things as passe by Liberie, as Land,
notwithstanding the deed of feofment be
of that by contrary name of baptism of
feoffor, and by contrary name of baptism
the feoffee, it is a good feofment, if liberie
seisin be made by the feoffor unto the feoffee,
and it takes effect by the libery, and not by
deed, &c. And if a man give unto me his
by word, and makes to me a writing of
same by his contrary name of baptism, and
my contrary name of baptism, it is a
gift by word, but not by the writing, &c.

43 Now is to shew, what persons may

*it is for may be
granted.*

Grantees, and as to that, know. That feme covert may be a Grantee, and a grant made to a feme covert shall be good and effectual until her husband hath disagreed. And therefore if a rent charge be granted unto a feme covert, and the dower is delivered unto her, her husband not knowing thereof, & the husband before any disagreement made by him, before any day of payment, now the grant is good, and shall not be avoided by saying, the husband did not agree, &c. But the disagreement of the husband ought to be shewed.

15 E. 4.

44 If a feme covert be enfeoffed of an acre of land, her husband being beyond the seas, and her husband returneth, and is not content with the feoffment made to his wife, and will not suffer his wife to take the profits of the lands, nor yet to continue seisin of the same land, but causeth her utterly to relinquish and quit the seisin & occupation of the land, and himself utterly refuseth to occupy the land, then by this meanes, he shall discharge himself of the damages from the time that his wife and he did refuse the occupation of the land, in a writ of Entry in the Per, brought against him and his wife, in case the feoffor or his wife were a disseisor. But for the time that his wife doth occupy the land, he shall answer damages, tamen quære, &c.

But know, that by this refusal of the occupation of the land by the husband and the wife, the free-hold is not out of them (if no other person enter into the land) but they remain 16 E. 4. 4. tenants as to use an action, &c. But if Lord and Tenant are, and the Lord marrieth a feme, and the Lord being beyond the Sea,

D.

the

10 F. 4. 21. the Tenant doth enfeoffe the wife of Lord and a stranger of the tenancie, and Lord returneth and distraineth the cattle the stranger for his rent; now by this dist the wife is out of possession of the land, the possession doth wholly remaine in stranger, who is the other feoffee; for taking of the streffe by the husband is a right disageement that his wife shall take by the feoffment: for otherwise husband shall be greatly mischiefed. For all the time that his wife shall be adjudged possession of the Tenancie, he himselfe is les of the tenancy in the right of his wife that for all that time he shall not have the of his Seigniorie, if any day of payment Rent be incurred in the meane-time, in quere, &c.

8 h. 6. 14.

46 A feme Covert may be a disseisor notwithstanding that her husband doe not sent to the same, and the husband shall be charged with the damages in assise brought gainst him and his wife. But if the husband disseise another man to the use of his wife the wife agreeeth unto the same, yet the hold shall not be said in her. And to this use, there is a difference when the wife right of entry, or title of entry into any land and when not. And therefore if a single man be disseised, and he take husband, the husband enter, now by this entry the hold shall be adjudged in the wife, because he had a right to enter.

44 E. 3. 9.

47 And if a single woman enfeoffe a stranger by deed indented upon condition, the condition is broken; the woman takes a husband

husband entereth upon the feoffee, by this
 the freehold shall be said to be in the
 feoffee, because that he had title to enter. And
 is called title of entry, because that he can-
 not have a writ of right against the feoffee, for
 he hath departed with her right by the feoff-
 ment, which she cannot bring back without
 a writ, which ought to be for the condition bro-
 ken, &c. And in the case of disseisin, he had
 title of entry, in so much as he might before
 the coverture, or she and her husband might
 after the coverture, have a writ of Right a-
 gainst the disseisor, &c. And an infant may be
 grantee, Lessee, Obligatee, Resignatee. And
 an infant of the age of discretion may be a
 disseisor by his actual entry.

But if 1. S. disseise a stranger unto the
 use of an Infant, the freehold shall not be in
 the infant before his agreement. But if an Infant
 has right, or title to enter into an acre of
 land, and a stranger entereth to the use of the
 infant, now the freehold shall be said to be in
 the infant before his agreement. And so
 if it be of a man of full age. And a man
 convicted of Felony, Murder, or Treason,
 is not a Grantee, and a Clarke convict may be
 a Grantee, and a man imprisoned may be a Grantee,
 &c. and the Kings villaine may be a Grantee,
 and an alien may be a Grantee. And a
 person outlawed in a personal action may be
 a Grantee, and a bastard may be a Grantee, or
 a churchwarden, but a bastard cannot be heir, nor
 heir without issue of his body begot-

But if a bastard signe (who is mulier in
 spiritual law,) continueth possession in

lands or tenements as heire to his father during his life time, and dieth without interruption of his possession, his issue shall hold the same forever against the mulier; and if such a bastard entereth into an acre of land after the death of his father, of which acre his father died seised in fee, and the bastard doth give the same acre in tattle to hold of him and his heirs by twelve pence, and dies seised of the same, his issue shall hold the same without interruption, this dying shall make his issue able in law to hold the same land against the mulier, if such a bastard entered after the death of his father, and the land whereof his father died seised in fee, is impleaded of the same land and touch by the mulier, and the bastard entereth into warranty by the oath of the lien made unto his father and his heirs, and process continueth until the demandant hath judgment to recover against the father, and the bastard hath judgement to recover the same land in value against the father, and either execution against the other, and the father dieth seised of the land which he had in fee, then the bastard, quare, whether the mulier shall have this recovery, &c.

2 Ed. 2.
bastard
19.

50 If a man hath issue two daughters, whereof one is a bastard by our law, and the other by the spiritual law, and dieth seised of one acre of land in fee, and both the daughters enter into the same acre and occupie as one tenant, that is to say, the bastard and the mulier, and the father dieth seised of the same land, and the bastard dieth seised of the same land without interruption, it is said, that her issue shall have the halfe of the acre as heire to his father, taken quare, because the other daughter entereth.

And know, That an Abbot may be
 grant, and Deane and Chapter, Maior
 Comminaltie may be Granters: but a
 Duke or Frier professed, &c. cannot be
 granter if he be not soveraigne of the house.
 He may be executor with the assent of his
 soveraign; and he may be Farmer to our
 King. A man of unsound memorie
 may be Grantor; and divers other persons
 may be Granters, who are not here specified.
 It is now to shew, by what names
 Granters may be. And as to that, know, that
 never ought one to be named in the be-
 gining of the Grant, who may take by force
 the grant, otherwise the grant is nothing
 worth. And therefore, if a man grant annu-
 unto the right heirs of John at Scile, and
 at Scile be living at the time of the grant
 the grant is nothing worth, for there is not a
 person at the time of the grant; for
 at Scile he cannot properly have an heire
 during his life. But if a rent charge be gran-
 unto I. S. during his life, the remainder
 to the right heirs of T. K. and T. K. be li-
 ving, and the deed is delivered unto I. S. now
 the remainder is good, conditionally sc. if T. K.
 be dead when the remainder falls, & hath heir,
 then it is good, otherwise not; And so, if land
 be leased for life, the remainder to the right
 heirs of I. S. who is alive at the time of the
 lease, &c. And the reason is, because that there
 is one named in the Lease who may take im-
 mediately in the beginning of the lease.

But if a rent be granted for life unto
 the heirs of I. S. who is alive, the remaind-
 er to T. K. now all the grant is void, because

there is not any person who may take immediately, and the remainder cannot be good in respect of the particular estate, if not special cases, &c. And if a man seised of a charge in fee, grant the same rent unto a stranger for life, and the tenant of the land attorn &c. And afterwards by another deed the grantor grant the reversion of the same rent unto the right heirs of I. S. who is alive, this grant is void, because that there is not any person who can take; But if I. S. had been dead at the time of the grant of the reversion then the grant had been good; and so know that the words (right heirs) may be the name of the Grantee.

2 E. 3. 1.

30 E. 3. 18.

2 E. 3. 1.

54 And if I. S. have issue two sons, and a rent is granted unto the first son of I. S. and by any other name, it is a good grant if the deed be delibered. But if I. S. hath not issue, and a rent is granted unto him, it shall be the first issue of I. S. whether it be son or daughter, this grant is void, causa patet.

39 Aff. p.

20.

33 h. 6, 23.

55 And in ancient time, a Grant made bathia beatae Mariæ, &c. Et Monachis ib. Deo viventibus had been good, So had it been a Grant made Deo & Ecclesiæ, of such a place. But such Grants are not good at this time because there is not a person named who may take by force of the Grant. And a Grant made to such an Abbey, and to the Warden of the same Abbey, is void at this day. So it is if a grant be made to such an Abbey, and to three or four Monks of the Abbey, though their names be named, &c. for they are dead persons in law. But a grant made unto the Church-wardens of such Church.

49 E. 3.

fefts 98.

12 h. 7. 27.

church, without naming of their names is
 But a grant made unto three or four
 the Paritioners of the Parish of St. Ma- ^{20 E. 4. 2.}
 in such a place is not good: But a grant ^{12 h. 4. 3.}
 unto the Bishop of Winchester without
 her name is a good grant; and a grant made
 to the next of the blood of I. S. is a good
 grant.

If a rent be granted unto I. S. for life,
 remainder in fee unto him who shall first ^{30 Af. pl.}
 come at Pauls the next day in the morning, 47.
 remainder is good upon condition, viz. if
 he doe not dye before the time, and also if
 he come to Pauls the next day in the mor-
 ning, and if he who first come be not a Monk,
 or other person, who is dis-abled to take by the
 grant. And so it shall be, if the remainder be
 granted unto him who I. S. shall name within
 three dayes, &c. But if a rent be granted un-
 to I. S. or I. D. this grant is void for the incer-
 taintie of the grant, for the deed is in the dis-
 cretion, &c. and the delivering of the deed un-
 to I. S. cannot make the grant to be good unto
 him, for a rent cannot passe without deed,
 and delivery of the deed, cannot cause a deed
 that is void, to take effect.

17 Now is to shew, what things may be
 granted or given without deed, and what not.
 And as to that, know, That all Chattels,
 reals, or personals, may be granted or given
 without Deed, if not, that it be in speci-
 al cases. And therefore if a man give unto
 me his Horse or Cow, or a Bow, or a
 Lance, or other such like thing, such gift is
 good by word: And if a man give unto me by ^{P. 15. E. 3.}
 word his corn growing upon the land it is ^{41.}
 good.

*Things may be
 granted without
 deed.*

good. And if a man give unto me a Tree growing upon his Land, it is good with deed.

58 But if Tenant in tail give to me a Tree growing upon the Land, and dies before the Tree is cut down the tree, and his issue enters into the land where the tree is growing, if he cut down the tree, he shall have an action of Treaspasse, because that the Tree is annexed to the freehold, and by the gift comes of the nature of the land: But otherwise it shall be, if the donor of the Tree had been sole Tenant of the land in Fee-Simple in his own right.

59 But if Tenant in tail give Corn growing upon the land unto me, and dieth before that I have severed the same from off the land, yet I may afterwards sever the corn and take it, for that the Executors of the Tenant in tail should have had it.

60 If Guardian in Knights service be of the body and land, he may grant the wardship of the land without deed, because it may pass by liberty of seisin; And as to the body, some are of opinion that it may be granted without deed; for they say it is but a chattel, and the Executors of the Guardian shall have the body. But that seems to be but little reason; for if a rent charge be granted unto a man for years, and he make his Executors and dieth, his Executors shall have the rent, and yet it cannot pass without deed. But it seems that the wardship of the body shall not pass without deed, for it doth not properly lie in liberty of seisin, no more than a villain in gosse. For if a man shall have a writ of Right of wardship of the body, and in the writ of Non-tenure is

18 E. 4. 21.

18 E. 4. 6.

10 E. 4. 2.

12 E. 3. gr.

59. 22. r. 2.

br. 937.

20 h. 6. 12.

and plea, as unto the body, and in the same
 the voucher lieth for the body, which prove
 that it is no personal thing, so that it seemeth
 cannot be granted without deed, taken
 the acre.

1. If a man seised of an acre of land, lease 10 E. 3. 1.
 the same unto a stranger for life, the remain-
 to l. s. in fee, this is good without deed,
 because that it passeth by libery of seisin. But
 the reversion of one acre of land cannot be
 granted for life in taile, or in fee, without
 deed. But the reversion of one acre of land 11 H. 4. 3.
 may be granted for years without deed, &c. 5 H. 6. 33.
 But a rent common in grosse, aduowson in
 grosse, and villein in grosse, cannot be grant-
 ed for years, for life, in taile, or in fee, with-
 out deed, if not in special cases. So is it of
 advowsons in grosse.

2. But an use may be sold without deed,
 and yet it shall descend to the heire of Cestuy 7 E. 4. 14.
 use, if it be an inheritance in him) the rea-
 son is, because the sale is but a contract; and
 house or land may be sold without deed, &c.
 3. If Cestuy que use of a reversion, wills, that
 his executors shall sell the reversion, and dies,
 his executors may sell the reversion without
 deed. And a rent may be granted by one co- 19 H. 6. 24.
 tenant unto another upon partition without 11 H. 4. 3.
 deed. Quere, if the Parson of a Church may
 grant the tythe of his Parsonage for yeares,
 without to him rent, without deed; some con-
 sider that he cannot, for they say, that not-
 withstanding that, when tythes are severed,
 they are but chattels personals; yet to the
 use of the Church they are as his freehold, &c.
 4. If Lord and Tenant be of arable
 land

lands by fealtie, and the service to render the tenth sheafe before the land shall be sowed; the Lord cannot grant this service for years without deed, and yet when they are feued they are but personals: but the Parson of the Church may take his tithes when they are severed from the tenth part, &c. But the Lord cannot take such services when they are leas'd without the assent of the Tenant, &c. And there is a writ de advoca, decim, &c. as appears by the Statute of West. 2. Cap. 5. which begins De advocacionibus Ecclesiarum, &c. in the end.

- 64 A bodie politique, as a Major and Commonalty cannot make a lease for yeares lands, whereof they are seised in the right of their Corporation without deed; the same law is of a gift of Chattels personals, mutatis mutandis, &c. But a lease for yeares made by an Abbot is good without deed during his time: he is Abbot, & a gift of Chattels personals made by an Abbot is good for ever, without deed. And also his successor shall be bounden by the cognisance made by him: But otherwise if it be of a deed inrolled, &c.
- 4 h. 7. 17.
37 h. 6. 3.
9 h. 6. 25.
M. 14. E. 1.
Abbe. 4.

Things to be granted

- 65 Now is to shew of things to be granted or charged: And as to that, know, that it is common Learning in the law, that a man cannot grant or charge that which he hath not. And therefore if a man grant a rent out of the Manor of Dale, and in the meantime he hath not any thing in the Manor of Dale, and after he purchase the Manor of Dale, yet he shall hold it discharged. And a man cannot charge a right, for it shall be a good plea for him to say against such grant, that he had not any thing in the matter in fact, that he had not any thing in the
- 14 h. 4. 31.
9 h. 6. 25.
10 h. 6. 12.
31 Aff. p.
24.

land at the time of the grant : But in such
if the grant had been by fine executory,
law is contrary.

And therefore, if a man grant the reber=
of an acre of land where hee hath nothing
the land, by fine executory, and afterwards
purchase the reversion, now the Grant
all enter when the reversion doth fall, or
all have execution thereof by a scire facias :

But if two men joyn in a grant of a reversion 11 H. 4. 1.
writing, and one of them hath nothing in
reversion, but the whole reversion is in the
other, and the particular tenant attorneth, it
shall be onely the grant of him that had the re=
version ; but if the grant had been by fine, it
would have been otherwise.

If Lord and Tenant are of three acres 7 E. 4. 25.
and by Feoffee and twelve pence, and the
grant the services of a third acre unto a
stranger, it is a void grant, notwithstanding
that it be by fine. If husband and wife
have one acre of land joyntly of l. s. for their
lives, and l. s. grant the Reversion of the acre
land which the husband alone holds of him 31 E. 3. gr.
life, and he soly doth not hold any part of 93.
this grant is void.

But if a man grant the Reversion, Om=
tenentium suorum ; tam liberorum, quam
servorum, qui tenet ad terminum vite vel an=
num, by this grant all the reversions which 5 E. 3. 34.
shall passe with the attornment of the
tenants, as well as if the Tenants had been
named or named. And if Lord and three
tenant-tenants are, and the Lord grant the
services of one of them unto a stranger, this
is void, notwithstanding that the same
Tenant 7 E. 4. 25.

Tenant attorn and surbibe his companions
for attornment cannot make a bad grant good
but otherwise shall it be by way of release.

69 And therefore, if Lord and two joint
tenants are, and the Lord releaseth all his
right unto one of them, this is good, and the
enure unto them both, for one of them ones
doth not hold of him, and it shall be prejudicial
to no person that the services shall be extorted
by the release, but unto the Releasor himself.
And alwayes a Deed shall be taken strong
against him who made the deed, &c. If Lord
and Tenant be of three acres of land, viz.
white acre, and two other acres: the Lord
grants unto the tenant by deed that he will not
distrain in white acre for his rent & services;
this grant shall not enure to such intent to
terminate the Seignorie in any part, but shall
enure by way of covenant, so that if the Lord
distrain in white acre for his services, the
tenant shall have an action of covenant.

2 E. 2.

Action for
le flat.

70 If a man hold an acre of land of T. S.
fealty and suit as of his Manor of Dale, and
S. is also seised of another Manor called Dale,
and L. S. grant unto the Tenant that he shall
do his suit at his Manor of Dale, this grant shall
not determine the suit at the Manor of Dale.
And if L. S. in the same case had granted unto
his Tenant, that he shall give unto him yearly
twelve pence for his suit, this grant shall
not determine nor alter the tenure.

7 E. 4. 25.

20 H. 6.

exring. 2.

71 But if Lord and Tenant are of two
acres, &c. and the Lord release unto the
tenant all the right which he hath in one acre
of the same land, it is a determination of the
whole Seignorie; And to this purpose the

is a difference between a release in fact, and a release in law. For if the Lord had purchased one of the acres in fee, which are holden of him, that is no determination but of the rate of the services which are annual and several, and he shall have the whole corporal service. But if the annual services be entire, as a horse, a hawk, &c. then all the annual services are gone by the purchase; but if one of the acres descend unto the Lord, there, if the annual service be entire, then shall he have the entire annual service out of the remainder of the tenancy. But if it was several, as rent, &c. then it shall be apportioned according to the rate of the land. But if the Lord disseiseth his Tenant of part of the tenancy, the whole Seigniorie is suspended: but a Seigniorie shall not be suspended in part and in esse, for other parcel to every intent, simul et semel in one person, if not in special cases, but a seigniorie may be determined in part and in esse, for other part simul et semel, 4 Aff. p. 5. 40 E. 5. 40 34 Aff. p. 15.

71 If a man hath a rent charge of two shillings issuing out of black acre, & hath no more; and he reciting by his deed, where he hath a rent charge of two shillings issuing out of black acre, and white acre, granteth the same unto a stranger, this is a good grant to charge black acre with attornment of the tenant: And if a man hath 2 shil. rent charge issuing out of black acre & white acre, and reciting by his deed, whereas he hath two shillings rent charge issuing out of white acre, and grant the same rent unto a stranger, this is a good grant with attornment, &c. for the whole.

19 E. 4. 1.

whole rent is issuing out of every acre, and of every parcel thereof, &c.

73 If three coparceners be of a Seignior in grose, and one grant her part unto a Stranger, this is a good grant with Attornment of the Tenant, &c. If Tenant for life be of the houses, and four acres of lands, and he in reversion grants the reversion of two houses and two acres of land, and the Tenant attorneth this is a good grant, for such reversion grantor had. But in that case the thing granted is uncertain. And as unto that, know that of every thing uncertain which is granted, election remains to him to whom benefit the grant or gift was made, to make the same certain, if not that it be in special cases.

9 E. 4. 39.
11 E. 3.
Annuity
27.

74 And therefore, if a man have five horses in his stable, & he giveth unto me one of his horses in his stable, now I shall take which of the horses I will. And if a man grant unto me 20 shillings of rent charge, or 40 shillings of rent charge, I may distrain for which of the rents I will, but I shall not have both. Shall it be, if rent or common be granted, &c.

75 And if a Feoffment be made unto a man of two acres, scil. of one acre in tail, and the other in fee, and doth not shew in certain which acre the Feoffee shall have fee, nor which acre he shall have an estate tail, and a Præcipe is brought against the Feoffee of both acres, and he loseth by default, and afterwards he brings a writ of Right of one acre, and it is put in view, and brings quod ei deforciat, the other acre, and that is put in view, &c. is at the determination of the will of the

in which acre he will have fee, and in which acre he will have an estate in tail, &c.

76 If a man seised of two acres, leaseeth one for term of life, the remainder of one acre unto a single woman, and doth not show in what part of which acre, and afterwards the woman takes husband, the tenant for term of life dies, and the husband enters in to one acre, and thereof doth enfeof a stranger by metes and bounds, and dieth. Now the wife shall not enter into the other acre, and choole that; for it was her folly to take such a husband who would do such act when the remainder fell, inasmuch that the title to the remainder did begin by the grant which was before the marriage, &c.

77 If a man were enfeofed of two acres of one in fee, and of the other for life, and doth not show in which acre he shall have fee, &c. and the feoffee doth enfeof a stranger of one of the acres by metes & bounds, this is no forfeiture, &c. patet.

78 If a man be enfeofed of two acres of one in fee, and of the other in taile, and the feoffee doth issue, and doth enfeof a stranger of one acre and dieth, his issue shall not have Forfeiture against the feoffor of this acre; for if his father made a feoffment of one acre, the feoffment was not of one acre severed from the other acre, so as one acre is as advantagious for the issue as the other acre, for the feoffee and he shall occupie all in common: and notwithstanding that the feoffment had bene made in febralty, that is to say, by metes and bounds of one acre, the issue shall be bounden to pay, forasmuch as he cannot inherit, if his father

father accept not of the gift, and this instrument shall not declare his will from the gift of the gift.

79 And therefore if a man grant a charge in taile, and the Grantee bring a
35 H. 6. 5. of Annuity, and recover, his issue shall have a Formedon of the rent granted, &c. If yearly rent be granted, issuing out of the Church of St. Peter, the Church of St. Paul and St. Paul is not charged by such Grant, for they cannot be intended one Church.

80 If two joynt-tenants in fee are of an acre of land, and Lease the same acre unto a stranger for life, and the Lessee granteth the estate to one of the Lessors, it seems unto men, that as unto one moitie, it shall enure by way of surrender, and as unto the other moitie it shall enure by way of grant; and the reason is, because that the Grantee had one moitie of the Reversion of the Land, right insomuch as if he had granted the Reversion to a stranger, and the Lessee torn, yet but a moitie passeth from him, by the like reason the Grant of the Lessee shall enure by way of surrender, but of the moitie &c.

5 E. 3. 19.

81 And if Tenant for life be of one acre of Land, out of which acre a rent is reserved to the fee, and the Tenant for life purchase the same rent in fee by grant, this grant is not to take effect in the heirs of the Tenant for life, and yet he had possession of the whole Land at the time of the grant, &c. And if Lord and Tenant be, and the Lord grant his Reversion unto the Tenant, and to a stranger, this grant shall enure by way of extinguishment for the Tenant.

35 h. 6. 41.

to the Tenant, and for the other
it shall enure by way of grant unto
stranger, &c.

And if Tenant for life grant his estate
to one of the Lessors, it seemeth unto some,
that this shall enure by way of surrender for
the whole, & their reason is, because every of
the lessors is seised of the whole, and of the
whole reversion, and the grant of the estate of
particular tenant cannot take effect by way
of grant without livery of seisin, and the
tenant cannot take livery of seisin of the
whole land, because he hath the reversion in fee
in the whole land in him immediate to the
whole particular estate, and in his own right.

Therefore, if Lessee for life grant his estate
to him in the reversion in fee in his own
right, and immediate to the particular estate,
this grant shall enure by way of surrender.
But if a woman who is single seised
of an acre of land in fee, leaseth the same acre
for life, and the woman taketh husband, and
the husband granteth his estate unto the husband,
this shall enure by way of grant, *causa patet.*

And if a man seised of an acre of land leaseth
the same acre for life, the remainder for life
to a stranger, & the lessee grant his estate unto
the stranger, it shall enure by way of grant, & yet the
tenant is seised of the whole reversion at the
time of the grant, but the same reversion is not
to take effect immediately after the estate of
the tenant is determined, if he in the remainder be
dead as he is at the time of the grant, &c. And
if two joint-tenants are in fee, and
one of them grant his Seignorie to one of the
joint-tenants, this grant shall take effect by
way

way of Extinguishment, for the whole, And to some it seemeth it shall enure by way of grant for the whole, and they say, that otherwise the Lessee shall not have liberty to depart with his estate to one of his Lessees, &c.

II 33 H. 8. 84 And therefore, if three Joynt-tenants are of one acre of land, and one of them releaseth all his right unto one of his companions, now he shall be in, in the part, for the third part of which the release is made, &c. And it hath been holden, if the lessee for life grant his estate unto his lessor and a stranger, the force of this grant, they are joynt-tenants.

85 And if lessee for life be, and the reversion descend unto two coparceners, and one of them taketh husband, and the lessee grants his estate unto the husband & wife, the same shall enure by way of grant for the whole, &c. It is known, that a right shall not passe by way of grant, if not by extinguishment, &c. And by release it may be extinguished.

21 E. 4. 2. 86 And therefore, if the Disfeisor of one acre of land grant his right unto a stranger, it is nothing worth but if he releaseth all his right unto the Disfeisor, it is good, if it be by way of grant. And if he confirm the estate of the Disfeisor, the confirmation is good. And if Obligor be, and the Obligee give the obligation unto a stranger, the gift abaisleth nothing as to being an action in the name of the obligee; (for a thing in action cannot be given) but the Donee may cancel the Obligation, and give the same unto the Obligor, &c.

21 E. 4. 20. 87 If annuities be granted by the grantor and his heirs unto a stranger and his heirs

seemeth to some that the Grantee may grant
 over, because it is an inheritance in him,
 amen quære. For the Grantee hath not any
 remedy for to have it but by way of action.
 quære. If the annuity had been granted for
 term of life, &c. If a man seised of an acre of 27 E. 3. 87.
 and leaseth the same acre for life, the remain-
 er unto the right heirs of l. s. who is living,
 the remainder takes effect presently, but is in
 a person to grant, because it is in abeyance,
 & in the consideration of the Law, &c.

88 But if Tenant in tail bee of an acre of 17 Aff. p.
 and, the remainder of the same acre unto 60.
 his right heirs, he may grant this Remain-
 er, yet it is not executed in him, &c. If Lord
 and Tenant be, and the Tenant lease the te-
 nancy unto the Lord for life, the Lord may
 grant his Seignory unto a stranger and yet it
 is not in suspense at this time, &c. P. 5. E. 3.
 16.

89 But if Lord and Tenant be, and the
 Tenant infeoffeth the Lord of the tenancy up-
 on condition, the Lord may grant his Seig-
 nory, and yet it is not determined nor extin-
 guished: For if the condition be broken, and
 the Tenant enter, the Seignory is revived:
 but if before the entry of the Tenant, the
 Lord infeoffeth a stranger of the Tenancy,
 then the first Feoffor, that is to say, the
 Tenant enter, the Seignory is not revived,
 it is determined, because that the Lord doth
 depart with the tenancy to his Feoffee dis-
 charged of the Seignory. And so in the same
 let the Lord may depart with his Seignory
 by such means, &c.

90 A Parson of a Church may grant his 38 E. 3. 6.
 church for yeares, and yet they are not in him 24 E. 3. 25.

at the time. But if Lord and Tenant be, Lord cannot grant the wardship of the heir, the Tenant living the Tenant. But if a man grants unto mee all the wooll of his sheep for seven yeares, the grant is good, &c.

91 If land be leased unto me for years, the terme to begin at the feast of Easter next coming, and before the feast I grant my tenement unto a stranger, it is a good grant. And if a Rent be granted unto mee, and before I am seised thereof, I grant the same Rent unto a stranger, the grant is good.

92 If he that hath a Reversion dependent upon an estate for life, grant a rent-charge issuing out of the same, the grant is good, though he charge the land after the death of the particular Tenant, &c. If a man sell unto me goods, and I suffer them to be in his possession, and a stranger takes them out of his possession, I grant or sell them unto the stranger in a good sale, or grant, &c.

93 But if a man take my goods out of my possession, and sell them unto me in open market, the sale is void, for it cannot be good, not that the property be thereby altered, but that it cannot be so before the sale, and at the time of the sale, the property was in me, then if it shall be altered by the sale, it is to be altered in me, and that shall be incontinent, for then it should be altered out of me immediately in me, &c.

94 If a villain be granted for life, the grant is good: And in the same case, if the villain purchase lands in fee, and the grant is made, he entereth into them as into lands purchased.

37 H. 6. 18.

36 Aff. p.

30.

33 Aff. p.

17.

M. 5 E. 4.

81.

is villain, he shall keep the lands unto him
and his heirs, and yet he hath not estate in the
villain but for life, but the reason is, because
that he hath the same as a perquisite, &c. And
for that purpose there is a difference when a
man shall have one thing in respect of another
thing, and when in the place of another thing,
and when by reason of another thing.

95 And therefore, if a man leaseth lands for
life, & the lessee doth waste, & the lessor grants
the reversion unto a stranger, and the lessee at-
torns, the Grantor shall not have an action of
waste, for this waste, because it was not to
his dis-inheritance, and the Grantor shall not
have an action of waste, because the reversion
was out of him, &c. And if Lord & Tenant be,
and the Tenant aliens in Mortmain, and the
Lord grants his Seignorie unto a stranger,
and the tenant attorns, now the Grantor shall
not enter for Mortmain (notwithstanding that
he within the year after the alienation) be-
cause that the Seignorie in respect of which he
is to enter, is out of him.

96 If Lord and Tenant be, and the Lord
grant his Seignorie for life unto a stranger,
and the Tenant attorneth, and dieth without
issue, & the Grantor enters for escheat, he shall
have a greater estate in the Tenancy than
he had in the Seignorie, because the Tenancy
cometh in lieu of the Seignorie: And so shall
he of lands recovered in value by voucher, as
for this purpose, mutatis mutandis, &c. P. 5. E. 4.

97 If a man seised of a Manor unto
which an Advowson is appendant in fee,
leaseth the same Manor unto a stranger for
years, or for the life of another man, and the

Church becoms void during the term, and years expire, or he for whose life it was done before the six moneths passe, and before the lessee hath presented; yet the lessee shall have presentment because he is to have the same a perquisite by reason of the Manor. And feoffee of one acre of land upon condition and the feoffor enters and doth trespass, and afterwards the condition is broken, and the feoffor enters, yet the feoffee shall have action of trespass against the feoffor, notwithstanding that he hath not the land wherein the trespass was done, Cause, &c.

98 If Cestuy que use be of a reversion, may grant the same as well as if he were in possession, and that by the Statute of Richard the third, made in the first year of his reign Chap. 1. And by the same statute, Cestuy que use of Lands or Tenements may charge the same by his grant: vide the Statute. And a man may grant common, or rent, notwithstanding that a stranger takes the rent, or useth the common, for he shall not be out of possession of them, but at his pleasure &c.

99 And know, That all such things as are granted unto a man by reason of his office touching the person of the Grantor, he cannot grant them over, if not in special cases, unless in case that it be granted to him and his assigns.

100 And also, if it be an office of trust concerning the person of the Grantor, he cannot occupy the same by deputy, if not in special cases, unless in case, that the grant be made. An Assignee is alwayes such a person

he doth occupie in his own right; and a de-
 cy such a person who doth occupie in the
 right of another.

101 If a man grant unto me to be his Car- 10 E.4.14.
 or, or Steward, or Chamberlain, &c. I cannot
 grant the same over nor occupie them by de-
 cy. If the grant be not so made as before
 said. And so is it of other the like Offices,
 Also the Lord Chancelor of England,
 Justices of the Kings Bench, Justices of the
 Common Pleas, and Barons of the Exche-
 quer, cannot grant their Offices over unto o-
 ther persons; or occupie them by Deputy, &c.
 And if annuity be granted unto me, pro con-
 tinuo in posterum impendendo, I cannot grant 21 E.4.83.
 over, if it be not granted to me and my as-
 signes. And Quære, whether I may then
 grant it.

102 If a man by grant have common of
 pasture for cattel without number, and his
 grantor grants common of pasture for cattel
 without number in the same lands to another 18 H.6.30.
 then the second grant is not good against the
 first Grantee, because a man by his grant
 shall not prejudice him who hath an elder title;
 but the same grant is good against the Gran-
 tor himselfe.

103 If two joynt-tenants be of a Carbe of 44 E.3.13.
 land, and one of them grants common of pa-
 sture for cattel without number, to be taken
 in the same land to a stranger, the grant is
 good against the other joynt-tenant as before
 said. But it is a good grant against the
 grantor himselfe. And Grantee for life of 33 Aff. p.3
 common of pasture for cattel without number,
 of a corodile uncertain, cannot grant the

same over, if the grant be not to him and assigns; But Grant of common of pasture for cattel certain, or of a copy certain, or an advowson, or of a villain, or rent, or like, may grant the same over, notwithstanding the grant be not to him and his assigns, unless there be a special proviso in the grant that he ought not so to do, &c.

104 Common of pasture appendant cannot by grant or otherwise be severed from the land to which it is appendant, if it be in esse. 5 H. 7. 1. 7. is it of Estovers granted to be burnt in a certain, mutatis mutandis: But a villain gr. 58. gardant unto a Manor, and Advowson pendant to a Manor may be severed from Manor unto which they are appendant, made in grosse by grant, &c. And it is a common rule in Law, that if no estate be expressed in the grant, the Grantor shall have the estate for life. But yet if there be such words in the grant which may declare the will of the Grantor, and his will is not contrary to the law, the estate shall be taken according to his intent and will, if not in special cases.

105 And therefore if two marks of rent be granted unto a man until ten years are levied, the grantor shall not have any part in this rent but for five years, for the intention of the Grantor cannot be otherwise, and the words in the grant are sufficient to declare the same intent, &c. And if a man seizes any rent issuing out of land which is devised, he deviseth the same rent unto a stranger, or his heir, viz. the heir of the Grantor, until full age, and the Grantor dieth, his heir

the age of sixteen years, the Deviser hath an estate in the rent but for five years, &c. tamen
ETC.

106 If a man seised of a Carbe of land in
grants ten Shillings rent issuing out of
the same land unto an Abbot, and a secular
man; it shall enure as several grants; and ei-
ther of the Grantees shall have ten shillings,
because that the grant shall be taken strong a-
gainst him that made it, and for the benefit of
the Grantee, tamen quære. The same law is,
mutatis mutandis. If two tenants in common
a Carbe of land joyne in a grant of a rent-
charge of ten shillings issuing out of the same
land unto another man &c.

107 But if two Tenants in common of a
carbe of land, lease the same carbe unto a
stranger for life, reserving to them ten shill-
ings. This shall take effect as several leases,
and either of them shall have but five shillings.
In the reservation is their own act, and they
shall not have more then they themselves have
reserved, &c.

108 If a man grant unto me common of
pasture for ten kine in his lands in such a
towne; yet I shall not have common,
but in his land commonable in the same
towne, and yet the grant is general, in
his lands in the same Towne: But the
reason is, because hee doth not grant but
only common of pasture, and for cattel cer-
tain and commonable; so as the grant shall
not extend but unto pasture lands. But if
common of pasture be granted unto me for all
kinder of cattel, I shall not have common
for hogs, &c. Also if common of pasture be
granted

9 H. 6. 36.
com. 12.

granted unto me for my cattel, I shall have common but with cattel commonable, for Grant shall have a reasonable construction &c.

109 If a man grant unto me common pasture for my cattel wheresoever his cattel shall goe, and he occupieth and manureth a hundred acres of land with his cattel, and afterwards he hath no cattel, yet I shall have common in the hundred acre, &c. But if common of pasture be granted unto me for my cattel wheresoever the cattel of the Grantor shall goe, &c. In this case the Grantee shall not have common, but when the Grantor uses common with his cattel, &c.

b. E. 1.
gr. 41.

110 If a man hath a fish-pond, and grants and sells unto a stranger all the fish in his pond, the Grantee cannot dig the land to make a trench, because he may take the fish with nets, and other engins, so that always a grant shall have a reasonable construction. But if a man have a wood, and he grant the Oaks growing in his wood to a stranger, the Grantee may cut down the Oaks, and come upon the land of the Grantor with carts to carry them, for otherwise he cannot conveniently have them, &c.

9 E. 4. 35.

111 If a man give me leave to make a trench from such a spring in his lands unto my Manor, so that I may lay a Pipe in the land to convey the water to my Manor Conduit. If afterwards my Pipe be broken, I may dig his land to amend the Pipe, &c.

112 Now is to shew, what things shall passe by the grant of other things. And as to that, know, That all things which are

in things that pass by grant of other things.

ent unto others shall passe by grant of those things to which they are incident: if not that in special cases. And therefore if Lord and Tenant be by homage and fealty, and the Lord grants the homage unto a stranger, and the Tenant attorns by this grant, the fealty shall passe as incident to the homage, &c.

113 And if Lord and Tenant be by fealty to rent, and the Lord grant the rent unto a stranger, and the Tenant attorns, by this grant the fealty shall passe as incident to the rent: But in the same case, if the Lord grants the rent (saving to himselfe the fealty) the Tenant shall have the rent as a rent seck, and the fealty doth not passe, &c.

114 If a man seised of an acre of land, leaseeth the same acre unto a stranger, reserving rent, and grants the reversion of the same acre unto another stranger, and the lessee attorns by the grant of this reversion, the rent shall passe as incident to the reversion: But in the same case, if the grantor of the reversion in his grant save unto himselfe the rent, the rent shall not passe, &c.

115 If a man have a reversion in fee in tenements of rent issuing out of lands in Dale, and also hath the reversion in fee of an acre of land in the same towne, and he grant all his

lands and tenements in Dale unto a stranger, by this grant the reversions shall passe: But if the Grantor had an annuities in the same town, it shall not passe by such grant,

116 If a man hath a reversion in a Mill, and grants totum molendinum suum, unto a stranger, by this grant the reversion of the mill shall passe, &c. But in the cases of grants of reversions, there ought for to be attornment, otherwise

19 Aff. P.
20.

44 E. 3.
Hor. de
son. fee
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34 H. 6. 6.
T. 16. E. 3.
Pr. 55. M.
38 E. 3. 36.

30 E. 1.

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Cor. Gr.

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otherwise they shall not passe, if the grant be not by matter of Record, &c.

115 If a man give and grant unto me *omnia bona & catalla sua*, his Charters concerning his lands shall not passe, by these words, &c. If Lord and Tenant be by Homage, Fealty, and Rent, and a stranger bringeth *Præcipe quod reddat*, of the Rent against the Lord, and recovers by this recovery, the Homage is not recovered, but the Fealty is.

116 If a man seised of a Manor, in which an Advowson is appendant, enfeoff a stranger of the Manor without saying any thing of the advowson, and without saying *cum pertinentiis*, the Advowson doth passe. And by such feoffment the services of the tenants who hold of the Manor shall passe by attornment of the tenants, for in such case the services are parcel of the Manor, &c. If by grant of lands and tenements an Advowson shall passe, &c. And if land be known by the name of the house, then the reversion of the same land may passe by the name of the house, &c. And if six acres are known by the name of a Manor, then the reversion of them may passe by the name of the Manor, &c. the law is e converso in these two last cases, *locus mutandis*, &c. By this word (Wood) great Wood and under-wood shall passe, &c. If I be seised of a Manor, and a stranger give unto me all manner of Coffers unto me, to my Manor, &c. by this grant I shall have Hides, Botes, Blow-botes, and Hay-botes, &c.



CHAP. II.

D E E D S.



Because I have shewed
in the Chap. of Grants
that there be diverse
things which cannot be
granted without deed, I
will now therefore shew
some things which are
necessary concerning

deeds. And as to that, know, that there are
things necessarily appertaining unto a
deed, viz. writing, sealing, & delivery; First,
something shall be said concerning them, and
afterwards shall be said other things concern-
ing deeds, &c.

Notwithstanding, That some Kings
& Princes have used to make blank Pat-
ents and Charters sealed to be delivered to
others men to write what matters soever they
would in them, and y^e such Patent have been
sufficient warrant to the Patentees, &c.
If a common person seal an obligation or
other deed without any writing in it, and
deliber

deliber the same unto a stranger; man or woman, it is nothing worth, notwithstanding that the stranger make it to be written, the he who sealed and delibered the same with him, is bounden unto him in 10 pound. In an action of Debt brought upon this Obligation, he may plead that it is not his *Causa pater*. The same law is of other *de mutatis mutandis*.

119 And forasmuch as it is commonly used to write a Deed before it be sealed, and after the writing to seal it, and after the sealing to deliver the Deed unto the party, Therefore first something shall be said of the writing of it. And forasmuch as it appeareth in the Chapter of Grants, there ought to be Grantor, Grantee, and a thing granted. So in the same manner in every obligation there ought to be Obligor, Obligee, & a thing in which the Obligor is bounden, &c. And so shall be of a Feoffment, and other Deeds, *mutatis mutandis*, &c. And therefore shall be spoken of other collateral things not put into the Deed, and when the Deed shall be suspicious for the manner of writing of it.

120 And as to that, know, That if a Deed have not any date, yet the Deed is sufficient enough: And when the party takes advantage of such a Deed, he shall aver the date of the delivery of it. But it is said, the deed be dated at London in the County of Yorke, and in truth there is not any such place within the same County, that this is a void deed. For the party who useth the deed shall not varie from the place dated within the deed. And if a Deed bear date before time

3 H. 4. 4.

36 H. 6.

saits 4.

12, 4. 23.

memor

memory, it is not pleadable, if it be not upon record. But the party may well give such a deed in evidence.

111 If a man bring an action of Debt in ^{2 E. 3.} ob-
the Common Pleas, upon an obligation bearing
date at Barwick, the Plaintiff shall take
nothing by his writ, because he cannot vary
from the place dated in the obligation, and the
Common Pleas hath not jurisdiction there.
But when a Deed is pleaded bearing date at
such a place where the Court hath not jurisdic-
tion, if the Deed be not answerable, the plea
is good enough.

112 And therefore if in a Replevin the
Defendant avow for a Rent-charge in ano-
ther place (then the Plaintiff counts) to him
granted by Deed bearing date where the court
hath no jurisdiction, and the Plaintiff main-
tains his declaration (as he ought) which is ^{2 E. 3. 57.}
and against the Plaintiff, the Defendant
shall have return of the cattle. And notwith-
standing that a Deed hath all his words, if it
be rased or interlined in any suspicious place
within the deed, or new letters written upon
old Letters, the deed is greatly suspicious,
not that it be in special cases. ^{M. 24. E. 3.}

113 And therefore if the name of the Gran- ^{35.}
or Grantee be rased, or interlined in a ^{M. 45 E. 3.}
Poll, the deed is very suspicious; So is ^{18.}
the thing granted; or in limiting of the
term, &c. If the date of a Release be rased in
the place, it is very suspicious, because it may
be dated out of the Realm. But if the
date of a deed be written crooked, the Deed is ^{44 E. 3. 42.}
suspicious for this matter.

114 And notwithstanding, That a Deed
Poll

H. 14 H. 4. 18. **¶** Shall be rated in a place which is not material, the deed is not suspicious for such matter. As if a deed of Feoffment be rated in addition of the name of the Feoffor. **Q.** If a deed comprehend Dedi & concessi, and concessi is rated, the deed is not suspicious for such matter. But otherwise is it, if Dedi be rated for this word Dedi comprehends the effect and force of this word Concessi and more. **31 E. 1. feof. 118.** Dedi in a deed of feoffment comprehends a warranty against the Feoffor, and so is not the word concessi. And although that deed shall be rated in a material place, as the name of Baptisme of the Grantor or Grantee, if it appear that there was writing there before, it is not greatly suspicious.

125. And if a man grant unto me a charge by Deed which he hath issuing out of the land of another man, and the Tenant for years, and the Grantor by his Deed re-grants the same grant, re-grants the same to the Grantor, and the later Deed is rated in the name of Baptisme of the Grantor, yet it is not greatly suspicious, because it doth referre upon another deed, in which referre, material, it is not rated. **Q.** If such a Deed be rated in the date of the place, &c.

P. 25 E. 3. 41. **126.** And notwithstanding that this (Executor) be rated in the will, yet the will is good enough, because it relies upon the gift of the Ordinary before whom it is proved, and there it appeareth whether they were made Executors or not. And if it be brought upon an obligation, the date of obligation be rated, and the Plaintiff

than indenture of defeasance probing the obligation, the Obligation is good enough. It is it of Indentures Bipertite, Triper=M. 41 E. 3: or Quadrupertite, if one of them, or all 29. them, be enterlined or raced in a materiall place, they are sufficient notwithstanding the race, if so be y they do not vary in the words. But if one indenture be raced in a place material, & the other indentures or indenture not raced, and the Indenture which is raced both not agree in words in y place which is raced with them, or that which is not raced, the Indentures raced is greatly suspicious. As put the case. The Indentures are bargain & sale of lands or tenements: and the indenture which remaineth with the vendor is raced, and the word which is raced is (manor) and in the other Indenture the word which is raced is (House): And the Wendor hath a Manor and also a House in the same place where the lands sold do lie, the indenture which the Wendor hath is greatly suspicious: And so is it of interlining, and of other like things; and if the words which H. 40 E. 3: are, That the Grantor, Feoffor, or Obligor, &c. have put their seal unto the deed, and not put in the deed, the deed is insufficient, notwithstanding y it be sealed. And if it appear that a deed hath been hung in the smoke, it is suspicious. And it is to be known, that notwithstanding, that words Obligatory, or, &c. are written in parchment or paper, & the Obligor delivereth the same as his deed, & it is not at the time of the delivery, it is but an error, notwithstanding that the name

of the Obligor be subscribed: and notwithstanding that yet by the custome in Cities and Boroughs, in an action a man shall not wage his law against a chancys book, and yet it is not answer the common law, notwithstanding the sealed with the seale of the party, and used by him.

130 Do know, that writing cannot be a deed, if it be not sealed, &c. But it is not to the charge, whether it be sealed with the seal of the Grantor, or not, or of a stranger by the Grantor, if the Grantor delivers the same writing, &c. as his deed.

131 And therefore if John at Scile takes an obligation in the name of Richard at Gappe unto T. D. and N. N. and seals the obligation with the seale of R. Roo, and Richard at Gappe take the same obligation so written and sealed, and delivers the same unto Richard as his Deed. Now this is a good obligation against Richard at Gappe, Causa pater, &c. it is of all other Deeds, &c.

132 If Abbot and Cobent seal a writing with the seal of a Lay man, and it is in the Dey, In cujus rei testimonium apponimus nostrum Sigillum commune, and the same writing is delivered according to the form of it is a sufficient deed, and shall binde the Abbot and Cobent: for this seal shall be the Cobent or common Seal for the Abbot, for with their common assent they may use their common seal at what time they will.

11 E. 4. 4.

133 And if Abbot and Cobent cause to be made a writing, in which it is said, Signum nostrum apposimus, and not Sigillum nostrum commune,

comm

1. ype, yet the writing is sufficient, and
 2. hide the Abbot and Cobent. But if
 3. of Priore seal a writing made in his
 4. and in the name of the Cobent without
 5. assent of the Cobent, and it is said in the T. 82 H. 6.
 6. Sigillum nostrum commune apposuimus, 4.
 7. the same is delivered by the Abbot or Priore M. 37 H. 6.
 8. without the assent or agreement of the Co= 3.
 9. it, this is onely the deed of the Abbot or
 10. priore, and not of the Cobent, causa patet. And
 11. is it of Dean and Chapter, Prior, and
 12. convent, and such like other, muratis
 13. standis, &c.

14. And notwithstanding that it be neces= P. 8 H. 6. 8.
 15. sary that a Deed be sealed, yet it is not requi=
 16. red that there be for every Grantor, &c. who 17 H. 6.
 17. named in the deed, a several piece of wax; fesm. 105.
 18. one piece of wax may serbe for all the
 19. grantors, &c. which are named within the
 20. deed, if every one of them put his seal upon
 21. the same piece of wax, or if another do so for
 22. all, &c. if the words in the deed imply so
 23. much, viz. if it be said in the deed, In cuius rei
 24. testimonium sigilla nostra apposuimus, or words
 25. to the same effect.

26. And it is to be understood, that not= M. 27 h. 6.
 27. standing, that a deed be once sufficiently
 28. sealed, and the print of the seal is all bruised,
 29. so it doth not appear that it was sealed, the
 30. deed is insufficient. But if there appear any
 31. part of the seal upon it, and the seal remain 18.
 32. fast unto the Deed, it is sufficient. But
 33. if the Seal be severed from the Deed, not=
 34. standing that a print remains, the deed
 35. is insufficient. And if it appear that the seal
 36. was once severed from the deed after it was

delivered as a deed, notwithstanding & the
be fixed again unto & deed, the deed is full

136 And it is said, If the Seal of a
be a little bruised, if it be an ancient or
writing, and part of the Seal remain
which there is any print, the deed is
enough. But if this part which remains
deed hath not any print, then the deed is
insufficient: But if it appeareth that the
which remaineth annexed to & deed which
any print, were one severed from the deed
loftned by the fire, and so fixed again to
label of the deed, the deed is insufficient.

137 And notwithstanding that a deed
sufficiently written in my name, & sealed
me, & is not delivered by me or by another
my assent, or by my agreement or commis-
sionment the same shall not binde me for all
while it is but an escrow. And if I make
an escrow, & let it lie by me, and a stranger
take it, it shall not bind me, for it is not yet my
deed.

C. R. 2.
M. debts,
159.

M. 6 H. 6.
37.

10 H. 6. 25.
41 E. 3. 29.

138 And if I make a deed, and deliver
the same unto a stranger as an escrow, to
be delivered unto me until such a day, &c. upon condition, that
before that day he to whom the Escrow
made shall pay to me ten pound, or shall give
me a horse, or enfeof me of the Manor of
Dorset, &c. & shall perform any other condition, that
if he shall deliver this escrow unto him
before the day, in this case, if he deliver the same
to him as my deed before the conditions
condition be performed, it is not my deed
but his. But if the conditions or condition
be performed, and the escrow delivered by
him after the conditions performed as my
deed, then it is my deed and shall bind me, and

time of this delibery, then begins it to be
 deed, and shall not have relation unto the
 delibery. But Quære, if it shall have re-
 lation unto the time of the condition or con-
 ditions perfozmed. But it seemeth not.

But if an infant makes an obligation
 ether writing to be written, & seals it, and
 delivers the same unto a stranger as an escrowl
 deliver unto him to whom it is made, when
 infant shal come to his ful age, as his deed,
 this case if the stranger deliver the same at h
 age of the infant, it is yet void, for he hath
 no authority to deliver it, if not by comman-
 dement, and that was void.

40 But if a single woman delibereth such
 escrowl upon a certain conditiō, &c. and before
 performance she shal take husband, yet if h
 conditions are afterwards perfozmed, & the es-
 crowl delibered as the deed of h woman, she
 shall be bounden thereby. And some men think
 shall not be bounden thereby, for they say h
 the delibery of the Escrowl by the stranger
 the deed of the woman, then it began first
 take effect as her deed, & shall not have re-
 lation unto the time of the first delibery made by
 the woman when she was single: insomuch,
 that if the party to whom the Obligation is
 made before the conditions perfozmed, & before
 the last delibery by the stranger as the deed of
 the woman, releaseth all actions & demāds unto
 the woman, and afterwards the Bailiff deli-
 vers the Obligation to whom it was made as
 the deed of the woman, because that the Condi-
 tions are perfozmed. The Obligee notwithstanding
 this Release, shall have an action
 of Debt, upon this Obligation, which
 probes

proves that the last delibery shall not have lation unto the first delibery, and at the time of the last delibery, and at the time of the conditions perfozmed, the woman had a husband. And all obligations made by a married man, &c. are void against her. & also it telleth unto them that this marrying the husband is a countermand in Law, &c.

141 But notwithstanding these reasons seemeth that she shall be bounden by the obligation: For at the time of the first bailment she was single, so that all things done at that time were good and lawful, &c. And it is like unto the case, where an Infant delivereth a writing upon such a condition Cause, &c. And if a single woman covenant with me by Indenture to pay unto me pounds at the Feast of Easter, which shall be in the year of our Lord, 1640. and before that day she takes husband, and the Covenant continues between them until the day which the covenant should be performed past, she shall not therefore be discharged from the Covenant, because the marriage could not be celebrated without her assent. And he that is bounden to do a thing, or to suffer a thing to be done, cannot discharge himselfe therefrom by his own act only, if not in special cases. And the woman when she was single, could not countermand the Bailment, as this is, because that the Obligation is as it were annexed and privie to the bailment of the obligation, in as much as he is to do and perform certain conditions which are annexed unto the bailment, and also is to take advantage of the performance of them, &c. Tamen quod

as much as the Obligee was not party to
the bailment, but the same was made by the
man onely: But the Law had been clear
in the Obligee, if the bailment, &c. had
been made by the woman, and the Obligee
only. See the same case in the Chapter of
writs, &c. pag. 4.

14. And it is to be known, That if a man 9 h. 6. 37.
command a Scrivener or other man to write
a deed, viz. an Obligation or other Deed in
his name, to T. Downe and he doth so. And
then I seal the Obligation, and command
the Scrivener to keep it until certain Inden-
turs between me and the said Tho. Downe
containing certain conditions to be sealed and
altered. And before it is so done, the said
Tho. Downe takes the said Obligation out of
the possession of the Scrivener, this obligation
shall not binde the Obligor.

15. But if I deliver an Obligation or o=
writing unto a man as my deed, to deli=
ver unto him to whom it is made when he shal
come to York, it is my deed presently; and if
I deliver it to him before he come to York, yet
I shall not abaid it. And if I die before he
come to Yorke, and afterwards he cometh to
me, and he delivereth the deed unto him, it
is clearly good, & my deed, and that it cannot
be if it were not my deed before my death.

16. And if I deliver a writing unto a 10 H. 6. 25.
man as my deed, to deliver unto him to M. 13 H. 4.
whom it is made upon condition, and he to 8.
whom it is made, gets it out of the possession of
the baillee before the conditions performed. Yet
it is my deed and shall bind me.

17. And if the next avoidance of the Ad-
vowson

.. homson of the Church of Dale, &c. be granted unto a man by deed bearing date the first day of May, in the fifth year of King Henry the seventh, and the same deed is first delivered as a deed to the party the fourth day of the same year. And by another deed bearing date the second day of May in the same year the next avoidance of the same Church of Dale, &c. is granted by the same Grantor unto another man, & the same deed is delivered as the deed of the Grantor, the third day of the same year; in this case the last Grantee shall have the next Avoidance of the said Church, and not the first Grantee, and yet the deed did bear date before the deed of the first Grantee, but it is because a deed first takes effect by his delivery, &c.

15 E. 3.
festy. 93.

M. 13 E. 3.
Ass. pl.
116.

146 And in an action brought by a woman upon an obligation, if the release be made by one who was her husband be pleaded, &c. the woman may say, & at the time of the delivery of the release, he was not her husband, &c. the jury shall be charged to enquire of the truth of the delivery, & not of the date, notwithstanding that the woman in her plea doth not make a protestation of the date, &c. And it is known, & he who pleads a deed, and he against whom a deed is pleaded, may vary from the date of the deed in the time of the delivery. And it is said, That then it behooveth that the date be before the delivery of the deed.

29 Ass. p.
47.

147 And therefore, If a man be bound by Recognisance, and the Recognisee grant unto the Recognisor by his deed indented, bearing date before the recognisance, that if the Recognisor perform certain conditions contained

same Indentures, that then the Recogni-
tion shall be of no force. In this case if behav-
our the Recognitor to take advantage of this
deed, by averring of the delivery of the same
after the recognisance entered into.

If a man bring an action of debt against
upon an Obligation bearing date the se-
cond day of May, and declares accordingly, &c.
I plead against him an acquittance bear-
ing date the first day of May in the same year;
he shall take advantage of this Acquittance by
avowment, to say, that it was first delibered as
between the party after the date of the obli-
gation, viz. at such a day, &c.

And in Replevin brought by a single
woman, the Defendant avows by reason of a
grant of a rent-charge made unto him by the
woman, which grant beareth date the first day
of May; the woman may avoid this deed, say-
ing, that it was first delibered the tenth day of
May in another year after; at which time she
had a husband, &c. And it is to be known, that
the woman shall not plead the delivery of a deed be-
fore the date of it: For every deed which hath a
date shall be intended to be written, the day of
the date: But it is no deed before the delivery,
and a deed cannot be delivered to take effect, as
before it be written.

And therefore if in an Action of Debt
brought against Executors, who plead a Re-
lease of the plaintiff made unto their testator,
the Release beareth date after the purchase of
the writ, now if the Executors will say that
it was first delibered in the life of the testator,
the plea is insufficient, *Causa pater*. And if the
date of the probate of a will made by the De-
cedent

M. 12 H. 6.

T. 18 E. 2.
feels. 160.

diary

inary be more ancient, then the date of making of the same will, the will is bound to bring an action upon it, &c. And it is known, that if a man pleads a release, or deed, bearing date at such a place, viz. at Dale, in the County of Middlesex, &c. he shall not suffer to say, that it was delivered at another place, then where it beareth date.

H.22 H. 6.
13.

36 H.6.31.

151 And therefore if an action of Debt brought by Administrators, and they declare that the administration was committed unto them in London, and the letters of administration bear date in another place, and in another County, then they have declared, the declaration shall abate: And so know, That he who pleads a Deed shall not vary from the place where he bears date. But he against whom a deed is pleaded may say, That it was made by duress of imprisonment at another place, and in another County where it bears date.

H.8 E.3.3.

152 And therefore, If in quare ejecit terminum, or Terminum qui præterit, or in medon, &c. the Tenant pleads the release of the Demandant, bearing at Dale, &c. and the Demandant say that he was taken by the Tenant at Dale in another County, and that he was imprisoned by him, until he made a deed unto him, this is a good plea: and the matter shall be tried where the imprisonment is alledged, &c. And so a man may be released from the place which is comprised in the deed, because when a man maketh a deed by imprisonment, he to whom the deed is made may put in the deed what date he will.

22 E.3.16.
Vilnc. 7.

153 And it is to be known, That an obligation

ation, or other deed may be made by Abbot
and Convent, out of their Monasterie; for all
Monks may be in another place, so that
the Deed say, Datum apud London, without
saying de domo Capitulari, such a deed is good
enough, although that their Monasterie were
Kingstone, &c. But if their deed say, Datum
domo Capitulari, this cannot be but where
the Chapter is, &c.

15. And it is to be known, that a Deed
cannot have any take effect at every delivery,
as a deed. For if the first delivery take any
effect, the second delivery is void; as in case
an Infant or a man in prison, make a deed,
and deliver the same as his deed, &c. And as
forwards the infant when he cometh to his full
age, or the man imprisoned when he is at
large deliver again the same Deed as his deed,
which he delivered before as his deed, this se-
cond delivery is void. But if a married wo-
man deliver a Bond unto me or other writing
as her deed, this delivery is merely void, and
therefore if after the death of her husband, she
being single, deliver the same deed again unto
me as her deed, the second delivery is good and
legal.

16. Notwithstanding that a deed be suffici-
ently written, viz. without rasure, interli-
ning or new writing upon the old writing,
without any other like fault, and also be
sufficiently sealed and delivered as the deed of
the party, yet if the words in the deed in them-
selves are not sufficient in Law to binde the
party, the deed will avail little or nothing a-
gainst him.

17. And therefore, if the disseisor enfeoffeth
a stran-

M. 1 H. 6.

4.
H. 8 h. 6. 9.

a stranger by deed, and the words in the
are such, viz. Know all men, &c. Quod
the Disseisor (and names him) per assensum
& consensum, of the Disseele (and names
him) Dedi & concessi & hoc presenti, &c. unto
the stranger, &c. and be done before any entry
made by the Disseele, these words per assensum
& consensum of the Disseele shall not bind
him, but that he may enter, notwithstanding
that it be true, that the Feoffment was made
with his assent and consent; for when he is dis-
seised he hath but a right which shall not be
part from him, if not by extinguishment, and
it ought to be at least by deed, & made unto him
who at the least hath the possession of the free-
hold in the same Land at the time, &c. And in
this case the Feoffee had not any possession at
the time of the feoffment, and the Disseele
cannot enter in the name of the Disseele, and
revest the possession in the person of the Dis-
seele, for the disseisor himself is in possession
and he cannot enter upon himselfe, &c. So
cannot be that the disseisor doth make this feo-
ffment as servant unto the disseele, for it is
made in the name of the disseisor, &c.

157 But if the disseele had entred, and then
the disseisor, and the disseele had joyned in
feoffment by deed, with words of confirmation,
Then it shall be said, the feoffment of the
disseele, and the confirmation of the disseele.
But if they have joyned in such a feoffment
by deed, before entry of the disseele: And if the
disseisor had made livery of seisin, now it shall
be said, the feoffment of the disseisor, & the con-
firmation of the disseele, and if a stranger
entered in the name of the disseele, and

his commandment had made a feoffment in the name of the disseisee, et per assensum & consensum, of the disseisee by a deed containing in it a warrant of Attorney to make libery of seisin, By such feoffment the Disseisee shall be bounden.

158 And it hath been holden, that a man shall be bounden by the speaking of another man, by averment thereof in putting his seale to it, and delibering of it as his deed. As if a man be Obligee in a debt, or covenant by writing, Et ad maiorem huiusmodi rei securitatem, invenni A. de B. et C. de P. fide iussores quorum unusquisque, in toto et in solido se obligavit, And notwithstanding that none speaks the same but their principal, yet if the other puts their seale to it, and deliver the same writing as their deed, then they allow of that which the principal speaketh, and so they themselves are become principals, and so it hath been holden, amen quæres.

159 And it is to be known, That at this day, a man shall be bounden by putting of his seal unto a Deed indented, and delivery of the same, and yet the words within the Deed are spoken only by another man. And therefore if a man maketh a lease unto me of my son land by deed indented for years, without saying any more, by this deed I shall be concluded, and yet there is no speech of mine in the deed. And if father and son be, and the father is seised of one acre of land in fee, and a stranger leaseth the same acre unto the father by deed indented for years, and the father dieth. Now the Lessee by this deed shall conclude the title of the Lessor to say, that his father died seised

14 H. 6. 22.

P. 43 E. 5.
17.

seised in his demesne as of fee, and yet it is not any speaking in the deed by the Feoffor &c.

160 And it is said by some men, that if a deed indented made between two, both by words within the deed, but the words which one speaketh be in the first person, & the words which the other speaketh are in the third person. In this case they say, that all the words in the deed, shall be said to be spoken by he who spake in the first person, which saying little or nothing to the purpose.

161 Now is to them, where the words Conringat, or Proviso, or such like words in a deed shall be void, where not. And to that purpose it is to be known, That when the Habendum or Conringat, &c. is not repugnant unto the premises of the deed, but may well stand, the Habendum, or, &c. shall be good and effectual, if not that it be in special cases. But the Habendum, &c. cannot stand with the premises, but is repugnant to the premises, the Habendum, &c. shall be of none effect, & all the deed shall take effect upon the premises if not in special cases.

162 And therefore if a man enfeofeth another by deed, and in the premises of the deed gives the land unto the Feoffee and his heirs Habendum et tenendum, unto the Feoffee and his heirs for terme of yeares, or for another mans life, this Habendum is void, and the Deed shall take effect upon the premises notwithstanding liberty of seisin be made according to that whole deed: The reason is apparent, for by the premises of the deed the Feoffor hath given the land unto the Feoffee and

his heirs, who had an estate in fee, and by the Habendum he hath excluded the Feoffee to have in the same land, and so the Habendum repugnant unto the premises of the deed, and therefore void.

163 And if two men are enfeoffed by deed, to have and to hold unto one of them, This Habendum is void causa patet. But if three men are enfeoffed by deed, and in the premises of the deed no estate be expressed: To have and to hold to one of them and his heirs, he hath a simple expectant of the whole land upon the estates of the other two his joynt Feoffees; and all three of them are Joynt-tenants of the whole Freehold.

164 If lands be given to John and Alice his wife, and unto the heirs of the body of John begotten: and if it happen, that Alice and John die without heirs of their bodies begotten against them, that then the land shall remain unto the right heirs of Henry; this Continuation is good, and may stand with the premises, and therefore is good, &c. And if l. S. be enfeoffed to have and to hold, to l. S. and T. K. and liberty of seisin is made unto l. S. according unto the deed, it is bound unto T. K. But if liberty of seisin had been made unto T. K. according unto the deed, then he takes by the livery of seisin, and not by the deed.

12 E. 3.
varia. 77.
H. 5 h. 4. 3.

165 And if a man be enfeoffed by deed of two acres, To have and to hold three acres, and livery of seisin be made unto him according unto the deed in the two acres, the third acre of which there was no speech in the premises of the deed, shall not passe by the deed: but if livery and seisin be made in this acre, then it shall

shall passe by the libery of seisin, &c. And hath been holden, that by the wordes comprised in the clause of warranty, the estate of a man shall be altered, but the same is not law as I think.

12 Ed. 3.
taile 3.

166 And therefore, if lands be given these wordes, Sciant, &c. quod ego, &c. dedi et l. uxori ejus, et ego the Feoffor, warr. prædictas terras, &c. dict. D. & l. uxori ejus, et hered. corpore eorum exeunt. And libery of seisin made according to the deed, they shall not have any estate but for their lives, &c.

167 But if a man be enfeoffed of one acre of Land, and no estate is expressed in the premises of the deed. To have and to hold to him and his heirs, this Habendum is good and effectual, because it is not repugnant, for it includes the premises and more. For if a libery of seisin be made, & no estate expressed to whom the libery is made, he hath an estate for his life, &c. And by the Habendum he hath an estate in fee, which includes the premises of the deed and more, &c. So shall it be if an estate for years, or for life, or for the life of another be expressed in the premises of the deed; To have and to hold to him and his heirs, &c.

H. 45 E. 3.
20.

168 And if an estate tail had been expressed in the premises of the Deed: Now by the Habendum it hath been holden by some that the Feoffee shall take nothing, but the Habendum is void, and the deed shall take all effect upon the premises, (which is not law as I think) But that the Habendum shall take effect to such intent, viz. That the estate tail shall be executed in the Donee, by force

P. 5 H. 5. 6.

premisses of the deed, & the fee-simple shall
in him expectant upon the estate tail by
of the Habendum, &c.

169 It land be given by deed, Reginaldo, &
v. ejus, & hæred. eorum & aliis hæred. dict.
Reginaldi, & si dict. hæred. de dict. Reginald. &
obierint sine hæred. de se procreat. this is a
estate tail : And the reason wherefore
these words in the close of the deed are effectu-
is, because they are not repugnant unto the
premisses, for their heirs are not excluded to
the land by these words, but it is by
declared what manner of heirs shall
be this land : and so they may stand toge-
r. &c.

170 And it hath been holden by some men.
if lands be given by the premisses of a
unto two men and their heirs, To have
to hold to them, and to the heirs of their
bodies begotten, that the Donors have
in tail, and also fee-simple expectant
on the estate tail (which is not Law as I
receiue) for they have a joynt estate for their
lives, and are Tenants in common of the e-
state tail, and they have not any fee-simple,
the reason is apparent, &c.

Lib. Ass. p.

171 And if Lands be given unto a man and
his heirs, if he hath issue of his bodie, that
it shall reuert unto the Donor, this is a
estate tail. And if lands be given by
deed, by these words, Dedi, &c. totam ter
meam, &c. Habendum et tenendum, &c.
hæred. sui, si hæred. de carne sua habue-
Et si nullos hæredes de carne sua habuerit,
revertatur dict. terra, ad me, the Donor, et
hæredes meos, this is an estate in taile.

14.

37 Ass. p.

15.

39 Ass. p.

20.

**And if land be giben by deed, viz. D. de
et A. uxor, ejus et uni hæred. de corpore suo
ui, procreata et uni hæred. ipsius hæredis tam
it hath been holden the same as an estate
tail, tamen quære.**

**172 And it hath been holden, if land be
ben unto a man by deed, and to his heirs of
body issuing : and if his first issue die with
heir of his body issuing, that then the land
shall reuert unto the Donor, and the Donor
hath issue three sons, and dieth, and his
son dieth without issue, notwithstanding these
words, his middle son shall have this land.
And the reason is, because that these words
(if his first issue dye without heir of his body)
are repugnant unto the word going before,
tamen quære. For some men think contrary
for that these words are but a declaration
which issue of the body of the Donor shall
have the land, &c.**

**173 And if land be giben by deed unto
Et si contingat ipsum obire sine hærede de corpore
re suo, quod tunc reuertat, to the Donor, and
his heirs, without any Habendum in the deed,
and libery of seisin is made according to the
deed as ought to be intended : In this case
Donor hath an estate in tail, notwithstanding
that it is not giben unto him and his heirs.
For the Stat. of West. 2. cap. 1. wils, Quia
voluntas Donatoris secundum formam in
doni sui manifeste expressam, de cætero
vetur.**

**174 And if lands be giben unto I. S. and
K. in the premisses of the deed, and no estate
expressed in the premisses of the deed. Tail
and to hold unto I. S. for life, the remainder**

unto T. K. and his heirs, this Habendum is good, and effectual, because it is not repugnant unto the premisses, but makes a declaration of the premisses, how they shall take the land,

175 And if one acre of land be given unto one by deed, To have and to hold one moitie unto the one and his heirs, & to have and to hold the other moitie unto the other, and the heirs of his body issuing, the Habendum is good and effectual: But if the premisses of the deed are, two acres, and the Habendum is but of one acre, and the estate of none of them is enlarged by the Habendum, it is a void Habendum, because that it excludes the Feoffees of part of that which was given.

176 As put the case, White acre and Black acre are given unto I. S. and T. K. and unto their heirs, To have and to hold white acre unto them, and unto their heirs, this Habendum is void: But if this acre be warranted unto them, this warranty is good, notwithstanding it doth not extend unto all the land which was given, or unto all the persons as were enfeoffed, &c. Or if the warranty be made by one of the Feoffors, it is good enough.

177 And if land be given unto two for the term of their lives in the premisses of the deed, To have and to hold the moitie of this land to them and unto their heirs, this Habendum is void, because it is not repugnant; for by the Habendum their estate is enlarged in the moitie, so as they have a Fee-simple in this moitie, and a Fee-hold in the other moitie, &c. If land be given unto husband and wife,

To have and to hold, &c. unto the husband
life, and unto the wife and her heirs, the
bendum is good and effectual, &c.

P. 22 E. 3.
4.

178 Now is to shew, to what person
uncertain contained in a deed shall
relation: And for that, know, That if
Abbot make a grant by such words, viz. A
Abbot of such a place, &c. grant all, quam
annuam pensionem T. D. ad rogatum l. de Ex
illam pensionem quam idem I. de Exon. ha
pro termino vitæ suæ in festo natalis Domini
Pasch. percipiend. quousque sibi de compen
Beneficio fuerit provisam, &c. These words
(quousque sibi) shall have relation unto
Grantee.

M. 9 H. 6.
35.

179 And if a deed be made in this form,
Noverint universi per presentes nos de com. ass
su, &c. Dedit, &c. W. H. et hæredibus suis
num Tostum quod jacet, &c. Habendum, &c.
dend. nobis et successoribus nostris xii. d. et
hac concessione prædict. W. H. renunciavit totam
Communiam suam cum diversis averiis nobis
quam habet et habendum consuevit cum diversis
averiis nostris, &c. These words in the
(renunciavit totam communiam suam) shall
have relation unto the Abbot and Covent
consideration of the premisses in the deed,
men quære.

180 And if a man by his Obligation
acknowledg himself to be endebted unto the
ligée in twenty quarters of coꝛn, to be deliv
ed unto the Obligée, at such a place, &c. and
perform the same he, viz. the Obligor acknow
ledgeth himselfe to be bounden in 100
lings, and doth not say, To whom he doth
knowledg himself to be bounden, In this

shall be taken, that he is bound unto the
right of the corn in consideration of the pre-
sents of the Obligation.

Or If a man seised of land, in fee thereof,
gives me by deed, Habendum et tenendum mihi M. 45 E. 3.
hundred. me. And moreover, by the same deed taile 14.
gives the same land unto me, and hared. 20 H. 6.
predict. this word (prædict.) shall have rela- Fefts 8.
unto my heirs : But if a rent be granted 19 H. 6. 73.
to I. S. and T. K. to perceiue unto them and
their heirs, and doth not shew whose heirs, the
grantees have but an estate but for their
lives.

CHAP.



CHAP. III.

Feoffments.

182



Now is to speak of Feoffment. And forasmuch a Feoffment cannot take effect without livery and seisin, something must be said what persons may make livery of seisin, and what persons may take by livery and seisin, and how, and what manner and forme livery of seisin may be made. And when the livery of seisin may be void, for the presence of man or woman on the land, who will not agree and assent to the livery of seisin, &c. And when by livery of seisin in one acre, many acres shall pass, and when the Feoffees shall have an estate in inheritance, without speaking of their heirs or their Successors.

183 And it is to be known, That there are some persons who may make livery of seisin in their own right, and also as servants unto others: And some persons who cannot make livery of seisin in their own right, but as servants unto others, they may. And some persons may make livery of seisin by themselves.

their own right unto some persons, and to others they cannot, and some persons may make libery of seisin, and take by the libery, &c.

84 And it is to be known, That all such persons as may grant by themselves, may take the libery of seisin by themselves, viz. in their own right, and as servants unto others, in the same manner and form as they may grant, &c. Mutatis mutandis, &c. And as to such persons see the Chapter of Grants, mutatis mutandis, &c.

85 And as to such persons as cannot make libery of seisin in their own right, but as servants unto others, may know, That a Monk, Priest, Canon professed, nor a married woman cannot make libery of seisin by themselves, viz. in their own right: and if they do take any libery of seisin in their own right, it is void, and the reason is, because that such persons professed in Religion, cannot have any land in their own right, unless it be seized from the same house of Religion, &c. 9 E. 3. 28:

86 And notwithstanding that a married woman may be seized in her own right with her husband, yet libery of seisin made by her without the agreement of her husband is void, insomuch that her husband and she may have an assise notwithstanding such libery of seisin, if the husband be seized of the freehold in the right of his wife: But in such case, if the husband were seized in his own right, notwithstanding such libery of seisin made by the wife, he shall have an Assise in his own name, &c.

87 But if a Monk or other person profes- P. 10 E. 4.

sed in Religion, or a married woman make libery of seisin according to the deed of a person able to make a feoffment in his own right, and by Letter of Attorney made by the Feoffor so to do, then such feoffment is good, because that the Feoffee in such case is not seised of the land by him that makes the libery of seisin, but it is in the land by the Feoffor. And if they do not make such libery of seisin according to their warrant of Attorney to make libery of seisin. Then in some cases it is a disseisin unto the Feoffor, &c.

M. II H. 3.

40 Ass. p.

38.

188 And therefore, if a Monk, or, &c. have a warrant of Attorney to make libery of seisin upon condition, and he make libery of seisin without condition, this is a disseisin unto the Feoffor: And if the warrant of Attorney be, to make libery of seisin after the death of a stranger, and he make libery of seisin in his life time, this is a disseisin unto the Feoffor, if libery of seisin should be made unto the Feoffee, he make libery of seisin but unto one of the Feoffees, and doth not make libery of seisin according to the deed, this is a disseisin unto the Feoffor, and the reason in these cases is, because he hath disobeyed the commandement of his Master.

12 Ass. p.

24. fest. 82.

40 Ass. 86.

P. 38.

189 But if he, viz. the Attorney do the command of his Master and more, yet shall it be good, for that which hath reference unto the commandement, and void for the rest, if it be that it be in special cases. As put cases, if the warrant of Attorney be to make libery of seisin unto one man, and the Attorney make libery of seisin unto two, it is good to him whom the warrant doth extend, and void to the other. And so is it, If the warrant of

may be to make livery of seisin of black acre, and the Attorney make livery of seisin of white acre and black acre, in this case all is not void, for it is good for black acre, and the reason is, because the Attorney hath done all the commandement of his Master, and more.

190 As if I give licence unto a man to take my white horse, and he takes my white horse and my black horse, in this case he is trespasser in taking the black horse, but not in taking the white horse: and the reason in this case is, because it is a licence in fact, and he hath done all, and more, &c. But if Lessee for years be of a house, and the Lessor enters into the house, to see if waste be committed or not, that is lawfully done: But if at the same time the Lessor carrieth away any of the goods of the Lessee, against the will of the Lessee, in this case the Lessor shall be punished for his entry, and yet the same was lawful at the beginning, and the reason is, because that when the Law gives a Man a liberty unto one certain intent, and he use this liberty unto another intent, or misuseth it, he shall be a Trespasser from the beginning, if not, that it be in special cases, &c.

T. 15 H. 4.

191 And therefore, If a man enters into a Tavern to drink, and when he hath drunke, he carrieth away the Cup without the will of the Taverner, now he shall be punished for his first entry; For it cannot be intended that his entry was to any other intent, but to drinke the Cup, for the Law cannot judge his intent against his Act done, ex post facto: The same Law is, If a distresse be taken, for doing damage; or for a Rent-Service, and

M. 5 H. 7.
11.

and the same be misused; Quare, if a Distress be taken for a Rent-charge, and be misused. And so is the difference between a licence to sell, and a licence in Law, &c.

22 Aff. p.
29.

192 But if a warrant of Attorney be made to make liberty of seisin unto two men, and one of them dyeth before the liberty of seisin made, and the Attorney makes liberty of seisin according unto the deed unto the other Feoffee who is living, it is good unto him for all the land. And so is it one of the Feoffees be possessed first before the liberty of seisin made. Causa pater, &c. And it hath been holden, that if a warrant of Attorney be made to make liberty of seisin without condition, and the Attorney makes liberty with condition that it be a disseisin unto the Feoffor, tamen quare, because that the Attorney hath done all the commandment of his Master, and more.

H. 22 H. 6.

42.

P. 10 E. 4.

5.

21 E. 3. 27.

193 And it is to understand, That there are some persons who may make liberty of seisin in their own right unto some persons, and unto other persons they cannot, notwithstanding that such persons are of ability in Law, to take liberty of seisin by force of feoffments of other men able in Law to make feoffments. And therefore, if two Joynt-tenants be, one of them cannot enfeof his companion because he cannot make liberty of seisin unto him: But if two Coparceners be, one of them may enfeof the other of his part and portion, and if two Coparceners be, one of them may release unto the other, and it shall be good and effectual to give an estate in his part to the lessee.

P. 38 E. 3.

12.

194 And if a contract of marriage be

When a man and a woman, yet one of them
may enfeoff the other. For yet they are not
one person in Law, in so much as, If the wo-
man dieth before the marriage solemnized be-
tween them, the man unto whom she was con-
tracted, shall not have the goods of the wife as
her husband, but the wife thereof may make
will without the agreement of him unto
whom she was contracted, &c.

195 And it hath been holden, That if a
man contract himselfe unto a woman, et po- M.16 H.3:
et cognovit eam carnaliter, and afterwards he testis, 117.
then enfeoff the same woman of a carbe of land
and give her in sei sin thereof, and afterwards
marryeth her in facie Ecclesie, that this feoff-
ment is void, because that it is made post fi-
rm datam, et carnalem copulam, et sic tan-
quam inter virum et uxorem: for that the marri-
age is subsequent, &c. But at this day, if such
feoffment be made, it is good enough: But
for the marriage celebrated between a man
and a woman, the man cannot enfeoff his
wife, for then they are as one person in
law.

196 But in divers cases a man may be a-
ble to make a thing passe unto his wife,
the which shall not immediately passe from
him. And therefore if a man enfeoffeth a mar-
ried woman, and makes a letter of Attorney
unto the husband to make libery of sei sin ac-
cording to the deed, and he make libery of sei-
sin according to the deed, it is a good feoffment;
for the husband is but a means to convey the
rehold to the wife, for by this act done, no
rehold doth passe out of his person, &c.

197 And it hath bene said, That if two
Joynt-

Joynnt-tenants be in fee and one of them leaseth that which belongeth unto him unto a stranger for years, the remainder for life in tail or in fee, to his companion; And liberty of seisin is made to the Lessee for yeares accordingly; that this remainder is good. But seemeth the Remainder is not good, for it had not been good, if liberty of seisin had been made unto the Lessee for yeares: So appeareth, That the Remainder shall pass by the Liberty of Seisin, and one Joynnt-tenant cannot make Liberty and Seisin unto his companion, &c. *Idco quære.* And if a man disseise me of a Carbe of land, he cannot feoff me by matter in deed, because my estate is lawful upon him, &c.

198 And it is to be known, that some make liberty of seisin, and take by the same liberty of seisin, but then they do not make liberty of seisin in their own right, or otherwise they doe not take by the liberty of seisin in their owne right, if not, that it be in special case &c. And therefore if land be leased for life unto I. S. the Remainder unto T. K. in fee, and a Letter of Attorney is made unto T. K. to make liberty of seisin, and he make liberty of seisin unto the Lessee accordingly, in the case he takes by the same liberty of seisin which he himselfe made, but not of his own Grant, for he made the same as servant unto the Grantor.

199 And it is said, that if a man enfeoff two by deed, and makes a Letter of Attorney unto one of them to make liberty of seisin, and he makes liberty of seisin accordingly by the deed unto his companion, he himselfe

who makes the libery of seisin, shall take by the same libery of seisin, because he shall be in the feoffor, and not by himselfe, &c. And if a man seised of land in the right of his wife, lease the same land for life reserving rent, and makes a letter of attorney unto the wife to make libery of seisin, and she makes libery of seisin accordingly, and the husband dieth, and the wife accept the rent yet she shall have Cuius vita, for this acceptance cannot make the lease good, insomuch as she is a stranger unto the lessee, for the lessee took nothing by the wife notwithstanding that she made libery of seisin, for she made that but as servant unto her husband, &c.

100 But if a man lease lands for life, and the lessee thereof enfeoffeth a stranger, and makes a letter of attorney unto his lessor, to make libery of seisin accordingly, and he makes libery of seisin, in this case it hath been said by some persons, That the lessor may enter upon the feoffee for a forfeiture, notwithstanding the libery of seisin made by him, for they say that the feoffee took nothing by him, for the lessor had nothing to do upon the land, if not to see whether waste were done, or to distrain for his rent and services, if they were behinde. And if the lessee be vouched, & he hath not other possession in the same land, after the title of the writ, in which writ he is vouched; but by making of libery of seisin by force of the letter of attorney, the demandant may well counterplead the voucher, &c.

And if my disseisor be disseised, and I sue assise of Novel Disseisin, I may well give

T.26 H.6.

gibe in evidence this disseisin, and yet I have an assise against my Disseisor, &c. against that it may be said, that the Lessor shall not enter for the forfeiture, because the party unto the wrong, viz. the discontinuance of the reversion, for nothing of the freehold passeth unto the Feoffee, if not by the liberty of the Lessor, and the Lessor himselfe made the lease of the land, which is an agreement of him, and the feoffee shall take by force of the feoffment, and he who is party to the doing of wrong shall not take advantage thereof.

M. 18 H. 8.

5.

202 As if Lessor and Lessee for yeares, joyn in the cutting down of 20 Oaks growing upon the lands leased, the Lessor shall not enter with the same in an action of waste, &c. And the heir who is party unto the death of his father, shall not have an appeal thereof; and the issue in tail disseise the discontinuance of his father, and thereof enfeoffeth his father, and the father dieth seised, and the issue in tail enters, he shall not be remitted, &c.

203 And if Lessee for life of an acre of land lease the same acre unto his Lessor for years, and the remainder unto a stranger in fee, the Lessor makes liberty of seisin unto the Lessor, it is no forfeiture. And if Tenant for terme of years enfeoffeth the wife of his Lessor of the land, and makes a letter of Attorney unto the Lessor to make liberty of seisin, which is made accordingly, it is no forfeiture, &c. And it is to be known, that if a man makes a deed of feoffment of his own land unto himselfe and a stranger, and make liberty of seisin unto the stranger according to the deed, all shall be good unto the stranger, and nothing unto himselfe.

for that he cannot give unto himselfe, as this case is, &c.

204 If a feoffment be made unto a Monk professed, and unto a stranger by deed; and liberty of seisin is made unto the stranger according to the deed, all passeth unto the stranger: But in the same case, if liberty and seisin be made unto the Monke according to the Deed, and not unto the stranger, nothing shall passe hereby. And if a man makes a deed of feoffment unto two, and one of them dieth before liberty of seisin made according to the deed, and afterwards liberty of seisin is made unto him who survieth according to the deed, all passeth to him.

205 And unto divers respects a man shall take by a liberty of seisin which he maketh in his own right, but then he shall not take in his own right: if not that it be in special cases, and therefore if Dean and Chapter are, and one of the Chapter is sole seised in fee in his own right of land, and thereof by deed enfeoffeth the Dean and Chapter, and makes liberty of seisin according to the deed, in this case he shall take by the same gift and by the same gift to divers respects. And so shall it be of Major and Comminalty, if one of the Comminalty be seised of land in his own right, and thereof enfeoffeth the Major and Comminaltie. And it is to be known, that such persons as are in possession of lands for years, or for life, or for term of years, cannot take liberty of seisin of the same land, &c.

206 Now is to shew, how, and in what manner liberty and seisin ought to be made. 31 P. 40 E. It is to be known, that of a rent recovered, 22.

3 E. 3. F.
N. Ass.
444.

If the Sheriff put the party who recovers in seisin, by the herbs growing upon the land out of which the rent is issuing, or by a bush or a twig of a tree growing upon the land out of which a rent is issuing, or by distress of Cattel levant and couchant upon the land, or by a clod of the same land, this is sufficient seisin, notwithstanding that the day of payment of the rent be not yet come. But then the party cannot drive such beasts with him out of the same place, &c.

207 And if a man come unto a rent by purchase, &c. Then it behooveth that he be seised of such things which is of the nature of the rent, and not of other things, if not, that it be in special cases.

T. 49 Ed.
23.

208 And if a man recovers land, he may enter into the land recovered, if his demand be certain, as of one acre, three acres, or a parcel of land, &c. or he may sue execution by *Habeas facias seisinam*, and then the Sheriff may put him in seisin by delivery unto him a bush, or a twig of a tree, or herbs growing upon the land, or by delivery unto him of a clod of the same land in the name of seisin, &c. and if the recovery be of a house, then the Sheriff may put him in seisin by delivery unto him the key of the door; Or otherwise he may open the house-door, and say to him, that he enter into the house, and take seisin thereof by force of the recovery.

39 Ass. p.
12.

209 And it is to be known, That the manner for to deliver seisin of land by force of feoffment, is to remove all persons off the land, and the one being upon the land in the presence of all the persons that are there, to them

use of their coming : and then if the feoff-
ment be by deed, to read the Deed in English,
the deed being read, the feoffor to enter
the land, and take a clod of the same land,
to deliver the same with the deed, as his deed
is the feoffment in the name of seisin of the
land, to have, hold, and enjoy according
to the purport of the same deed, &c.

And so, and in the same manner shall it
be done if libery of seisin be to be made by a
warrant, by force of a warrant of Attorney,
etatis mutandis, &c. And if a feoffment be
made by word, it appeareth out of this before,
in, & in what manner libery of seisin shall
be made ; and also if a feoffment be made of a
house, it appeareth out of the premises, how,
and in what manner libery of seisin shall be
made : And if a feoffment be made of a house
and land by deed, and the feoffor in coming to
the house, or land with the feoffee and others,
to read the deed of feoffment, and afterwards
to go unto the house or land, & delivereth sei-
son accordingly, it is good, notwithstanding
that the feoffor remain upon the land or in the
house all the time, and takes the profit, at the
discretion of the feoffee.

And if a man lying upon his death-bed
in his house, makes a charter of feoffment of
the same house, and delivereth the same unto
the feoffee, saying, have and hold this house
according to the purport & effect of this char-
ter, and the feoffee by force thereof taketh sei-
son, notwithstanding that the feoffor continues
in the same house, and there dieth, it is a good
conveyance of seisin and a good feoffment.

17 Ass. p.

61.

11 Ass. p.

6.

43 Ass. p.
26.

212 And if a man lying sick with the Maner, selleth the Maner unto a stranger, and saith unto him, that he will, that he take seisin presently, and commandeth all servants to be attendants upon him as Lord and Master, and thereupon the stranger taketh seisin, and perhaps giveth unto the servants twenty shillings to drink, and the servants of the Maner attach unto him, and the stranger goeth from the Maner about his business, and the Feoffor dieth upon the Maner, yet it is a good libery of seisin according to the words of the estate, &c. And it may be known, that libery of seisin may be made of land, or of a house within the view.

213 And therefore if I deliver a deed of feoffment unto you, and shew unto you the land or tenements, and say unto you, That I will that you enter into the same lands or tenements, to have and hold according to the port and effect of the deed, and deliver unto me the deed as my deed, and you enter into the same lands, &c. this is a good feoffment.

P. 38 E. 3.
5.
214 And if a man make a deed of feoffment unto Alice at Style, and afterwards the Feoffor and the said Alice come unto the Church door to be married, and the Feoffor delivereth the same deed unto Alice, and sheweth unto her the Tenements which are comprised in the deed, and saith unto her, that he will, that she shall have the same tenements which he sheweth, and afterwards they are married together, the husband ever after claimeth not any thing therein, but in right of the said Alice, this is a good feoffment notwithstanding that Alice doth not enter, for the entry of the husband is sufficient for her.

And it is said, that if a man makes a feoffment in my name of land whereof I am seised, and cometh unto me, and prayeth that I would deliver unto him seisin of the land contained in the deed, according to the purport and effect of the deed, and I read the deed, and read it, And then I say unto him, Sir, I deliver unto you this deed as deed in the name of seisin of all the lands, tenements, and other things comprised in the deed, To have and to hold according unto the purport and effect of the deed; and by the force thereof the feoffment presently enters, this is a feoffment, &c.

P. 53 E. 3.
Fests 51.

And it hath been said, That if there be father and son, and the father is seised of land, whereof he enfeoffeth his sonne, and the son after liberty of seisin made unto him, suffers his father to occupie the same land, who is contented to occupie the same at the will of the son, and afterwards the son cometh unto the parish Church of the town where the lands are, and there in the hearing of the parishioners saith unto his father, Father you have given unto me lands, and declareth the certificate thereof, &c. and as fully as you have given them unto me, I do give them back unto you, and the father by force of these words presently enter into the lands, that this is a good feoffment, which is not law at this time as I think, &c.

But a man may assign dower unto his wife at the Church door in one County, of which the wife is in another County, without deed; the reason is, because that the assignment of dower cannot be made before the contract be finished.

M. 40 E. 3.

of 43.

ed by them at the Church door, and then there are but one person in Law, &c.

218 And it is to be known, that sometimes the libery of seisin shall be void by the being of another person upon the Land and Tenement whereof the libery of seisin is made, and no party to the libery of seisin. And as that, know, That when two men come to lands & tenements together to claim the lands and tenements, & one of them claimeth by one title and the other claimeth by another title, the law doth adjudg the possession to him who hath rightful title unto the possession. For if a Disseisor be of one acre of land, and dieth seised of the same land in fee, and the heire of the disseisor, and the disseesee come on the same land together to claim the land, the law will adjudg the possession of the land in the heire of the disseisor, and not in the disseesee, yet the disseesee habet majus jus ad rem viz. in jure, to have the land, then the heire of the Disseisor hath: But the heire of the Disseisor hath majus jus in re, viz. in possessione, then the Disseesee hath, therefore, &c.

219 And if a man enter into my lands, with wrongful title, and I being there, he doth feoff a stranger thereof, and doth deliver to him seisin. it is void, for he cannot give seisin before he himself hath seisin, and he hath not seisin at the time of the libery of seisin, for the Law will adjudg the possession in me, for I have right unto the possession, because that I am present at the time of the delivery of seisin.

220 And if two Joynt-tenants are in

one of them doth enfeof a stranger of the whole against the will of his companion be-
upon the land, by this feoffment, but the
it passeth: *Causa patet*. And if the Lessor
years entereth upon the Lessee, and against
will of the Lessee, the Lessee being upon the
land, the lessor doth enfeof thereof a stranger
and, this feoffment abaileth nothing as a
feoffment, for a feoffment cannot take effect
without livery of seisin, and the Lessor cannot
give livery of seisin against the will of the
Lessee, the Lessee being upon the land, because
the law doth adjudge him in possession, &c. and
without a possession a man cannot make livery
of seisin, &c.

And that is the cause, That if a lease
years be of land, and the Lessor grant the
possession unto a stranger, & the Lessee attorn,
the freehold shall passe without livery of
seisin, because that the Lessor cannot make
livery of seisin, without wrong done unto the
Lessee, &c.

But if Lessee for yeares enfeofeth a
stranger, the Lessor being upon the land, yet
the land shall passe by the feoffment: but yet
if he continue upon the land, claiming
the same after the feoffment, the same doth
enterbail an entry for a forfeiture. And the
reason wherefore it passeth by such feoffment
is, because the Lessor had nothing to do to
meddle with the possession of the land during
the Terme. But he may come and see whe-
ther waste be done, or for to distrain for his
rent if it be behinde, &c.

And if husband & wife purchase land
jointly in fee, and the possession be executed in

2 Aff. p. 1.
H. 2. 3. 4.
5 Aff. p. 8.

H. 2. 1 E. 3

them accordingly and afterwards the husband doth enfeof a stranger in fee, and the wife saith that she will not agree thereunto, nor off the land, but continueth there at the time of the libery of seisin, notwithstanding the same, all the land doth passe by the feoffment.

T. 12 E. 3.

34.

Fests, 29.

224 But if Major and Comminaltie joyntly seised of any land in fee, and the Major against the will of the Comminaltie enfeof a stranger of the same land, the Comminalty being upon the land when libery of seisin is made; nothing passeth by this feoffment, &c.

225 And if the Deane make a feoffment without the assent of the Chapter, in his own name of land in which he is joyntly seised with the Chapter, the Chapter being upon the land at the time of the libery of seisin, nothing shall passe by this libery of seisin. But if an Abbot make a feoffment without the assent of the Covent in his own name of land parcel of the Monasterie, the Covent being upon the land at the time of the libery of seisin, the land shall passe by this feoffment, &c.

226 Now is to shew; whether by libery of seisin of one acre of land, or of a parcel of an acre of land, or of one Tenement in the name of many acres, or tenements, all shall passe. And as to that, it is to be known, that if a feoffment be made generally of all the lands which the Feoffor hath within the County of Middlesex, and he hath lands in twenty several places within the same County, & maketh libery of seisin in one acre, or in one house, the name of all the lands & tenements which he hath in the same County. By this libery

9 H. 7. 25.

seisin all passe, &c. in so much as if such a feoffment be pleaded by deed, of an hundred acres, and the feoffor saith, as unto twenty acres nothing passeth by the deed, it is no good plea, Causa patet, &c.

But by libery of seisin in one County, Lands and Tenements in another County will not passe. Yet if the Scyte of the Manor of Dale be in the County of Essex, and parcel of the same Manor doth extend into the County of Middlesex, and a feoffment be made of the Manor of Dale, and libery of seisin is made of the Scyte of the Manor which lyeth in the County of Essex; by this libery of seisin, the parcel of the Manor which lyeth in Middlesex shall passe, because it is parcel of the same, viz. the Manor, of which the feoffment is made. The which Manor is but as one thing to such purpose, &c.

But if a feoffment be made of the Manor of Dale in Dale, which Manor extends into Dale and Sale, & libery of seisin is made accordingly in Dale. By this feoffment nothing passeth but that which is in Dale, because that the feoffment is not of more but of that which is in Dale, and the libery of seisin made in Dale, and not elsewhere, &c.

And it is to be known, That if a man disseised of two acres in several Counties, in the Disseise entereth into one acre in the one of both acres, yet this entry shall not extend unto the acre lying in another County, which acre the entry was not made.

And if in an Assise, the Plaintiff make complaint of the Manor of Dale, and the Defendant plead a feoffment of parcel of the said Manor T. 1 H. 7.
H. 4 Manor 29.

Manor by deed, and sheweth a deed of another Manor, viz. of the Manor of Sale, it is to the purpose, to make the same passe by deed, for the Manor of Dale cannot be a Manor of Sale, nec e converso. But if he pleaded a feoffment of the moitie of the Manor of Dale by the name of the Manor of Sale, it should be otherwise, because that the Manor of Dale may be known by the name of the Manor of Sale, &c.

231 And it is to be known, that if a man be seised of Land and also of a rent-charge issuing out of land which lyeth in the County which the land whereof he is seised is, and he granteth another County and giveth the land and rent by a deed, bearing date in the County in which the land is whereof he is seised, & liberty of assize is made of the land, and he deed delivereth his deed, yet the rent shall not passe before attornment of the Ter-tenant, out of which the rent is issuing: But if the Tenant attorn to the life of the Grantor, & Grantor, then the rent shall passe, notwithstanding that the Tenant who doth attorn be another man than he by whom the Ter-tenant at the time of the grant, and notwithstanding that the deed beareth date in another County, then the Land is, out of which the Rent is issuing.

232 And it is said, That if a man be seised of two acres of land in one County, and he entereth into one of the acres, claiming the said acre only, and maketh a deed of feoffment of both acres unto a stranger, and maketh assize of seisin according to the deed in the County in which he entered that both acres shall passe unto the feoffee, because that this claim is not

ing to the purpose, because he had right of
 ry before, &c. And both acres are in one
 county, so as his entry into one acre shall be
 into both acres, notwithstanding the
 &c. Against which it may be said, that P. 9. 7. 25.
 the acre into which the Feoffor did not enter,
 shall not passe by the feoffment: for when a
 is out of possession of a thing severable,
 is at liberty to continue his possession in it,
 which part he will, and shall not be com-
 pelled for to re-continue possession unto all, in
 spite of him.

333 And therefore if a man be disseised of
 two acres being in one County, and the Dis-
 seisor bring Waste of one of them, as he may,
 and recovrcth the same acre, and entereth into
 for: of his recovery, the entry into this
 shall not be said an entry into the other a-
 cre, notwithstanding & his entry was right
 all into the same acre, and notwithstanding
 that both acres are in the same County, if not
 he enter into the same acre, in the name of
 acres, &c. Then in the principal case, the
 Disseisee was out of possession of both acres,
 and he may suffer & Disseisor to continue pos-
 session in them, if he will: And therefore in so-
 much as the acres are severable, and the Dis-
 seisee hath not entered put into one of them,
 claiming the same acre onely, this entry can-
 not give him possession in both acres, and not-
 withstanding & after his entry he hath made
 deed of feoffment of both acres, & hath deli-
 vered seisin according to the deed in the acre in
 which he entered, claiming & solely, yet that
 cannot be said an entry into the other acre.
 because the circumstance of this feoffment
 doth

doth not gibe unto the Feoffor possession of
acre in which the libery of seisin was made
for the possession of that was in the Feoffor,
his entry made before, and so, &c.

234 And if Lord and Villein be, and
Villein purchase two acres of lands in fee
ing in one County, and possession of them
executed to him accordingly, and the Lord
the Villein entereth into one acre, not claim-
ing the other acre, and afterwards makes
dæd of feoffment of both acres unto a stranger,
and makes libery of seisin in the acre in which
he hath entred according to the dæd, yet
the acre into which he did not enter, shall not pass
by the feoffment, &c.

235 And yet a man may enter as seruant
the Lord, and by his commandement, and
shall be good; but notwithstanding that
Feoffor doth so, yet he cannot take that by
feoffment; for a man cannot make libery
of seisin before he himself hath possession, and
at the time, viz. when he made libery of seisin
had not possession but onely of the acre
into which he entred, &c. The same law is, when
a man hath title to enter into two acres
on condition broken, &c. *mutatis mutandis*.
So shall it be, where a man hath title of entry
into two acres of lands holden of him, be-
cause they are aliened in Mortmain, &c.

236 Now is to shew when the Feoffor
shall have an estate of inheritance, with
speech of their heirs or successors. And
that, know, that it is a common rule in law
That if lands be given in Frank-marriage
unto a man with the kinswoman of the Feoffor
no: of the whole blood by these words (Frank-
marriage)

marriage) they have an estate in special tail
they inter-marry: And if in such a case the
husband dyeth, and the same Donor giveth
the lands in Frank-marriage unto a second
husband of the same woman, this is a good
Frank-marriage.

237 And a gift in Frank-marriage made
after the marriage is good, and yet some have
to the contrary, and their reason is, because
the gift in Frank-marriage ought to be
made for advancement of the Kinswoman of
the Donor by marriage, and therefore such a
gift made after the marriage cannot be inten-
ded for that purpose. Against which it may be
said, that such a deed made to such persons after
the marriage between them, may be the cause
of the marriage as well as if such a gift had
been made unto them before the marriage.

238 And if after such a gift in Frank-
marriage, and after the marriage solemnized
between the Donors, the Donors are divorced
from the suit of the husband. In this case the
woman shall hold the whole land, and the hus-
band shall have none of it. But if such a di-
vorce be in other gifts, in special tail by ex-
press words, yet they shall hold the same
lands so given jointly, during their lives,

239 And if Lands or Tenements be divi-
ded by will, unto a man and his Assignes, in
severall. By these words he shall have a fe-
offee. See more of that in the Chapter of
wills, &c.

240 And it is to know That if lands be
given unto Major and Comminaltie for
their lives, by intendment they have an estate
not

H. 4 E. 3. 8.

12 Aff. p.

22.

M. 22 E. 3.

16.

T. 22 E. 4.

Fests 38.

not determinable. So if a feoffment be made of Lands unto a Dean and Chapter, with speech of their Successors.

T. 41 H. 4.

84.

241 And if my Feoffee in fee of one acre of Land, do re-ifeoff mee of the same acre by deed, reciting in the same Deed That I have enfeoffed him of an acre of Land, To have and to hold to him and his heirs : And saith further in the Deed that as fully as I have given the Land unto him, he doth give mee them back again, and delibereth to mee the deed as a deed, and seisin of the land according to the Deed. In this case it seemeth, That I have an estate of Inheritance in this land notwithstanding that it is not given unto mee and my heires, because that my estate doth relate upon an estate of Inheritance, recited within the same deed, in quare.

39 Aff. P.

12.

242 And if I be enfeoffed by Deed of one acre of land, to have and to hold the same land to me and my heires, and by the same Deed the Feoffor binds him and his heires to warrant the same land, in forma predicta. By these words I and my heires shall vouch by this warranty, and yet neither my heires are not named in the clause of the warranty, &c. But by these words (forma predicta) the warranty relates unto the words precedent in the Deed. And the nature of a Warranty, is proper to runne with the estate, &c. And the words (forma predicta) helpe this matter &c.

H. 14 H. 4.

13.

443 But if Land be given unto mee by T. 20 h. 6.
 Deed to have and to hold to mee in fee, 46.
 without speaking of my heirs, and libe=
 ty of seisin be made unto mee according to
 the purport of the Deed. By this Feoff=
 ment, I have an estate but for the terme of
 my life, &c.

CHAP.



CHAP. IV.

Exchanges.

244



Now are we to speak of Exchanges : And it is to be known, That Exchanges are made of such things as of such estates as may passe by libery of franchise, and if the things exchanged are in the same County, the exchange is good without deed, not, that it be in special cases. As put the Exchange be made between l. S. and T. K. of the land which one hath in the County of Middlesex, for land which the other hath in the same County, &c. But if the lands of l. S. of which the exchange is made are in one County, and the lands of T. K. of which the Exchange is made are in another County, the exchange ought to be by deed Indented. And the estate which the parties take by the Exchange be of an estate of Freehold or inheritance: But if the estate in the exchange be for years, then the exchange is good & effectual without deed, notwithstanding that the lands of the one which is taken in exchange be in one county, and the lands of the other which is taken

9 E. 4. 39.

45 E. 3. 20.

in change be in another County.

245 But if Exchange be made of any thing which lieth in Grant, and cannot passe by li-
very of seisin, then the exchange ought to be by
deed, of what estate soever the exchange is ta-
ken, notwithstanding that every thing of
which the exchange is taken be in the same
County.

246 As put case, Exchange be taken of rent
of Land, (and the Land out of which the
rent is issuing) and the land whereof the ex-
change is taken, are in one County, then he
who shall have the rent in exchange for the
Land, ought to have a deed of of the same, pro-
ving the exchange. But it is said that it be-
cometh nothin who hath the land in exchange
of the rent to have a deed proving the exchange,
men quere. For in exchange there ought to
be two grants, and in every grant mention
ought to be made of every thing taken in ex-
change, &c. And therefore it is well done,
that in such case the exchange be by deed in-
dented.

247 But if an Exchange be taken of the
version of one acre of land for three shillings
rent issuing of the other acre of land, and
tho' acres are in one County, it behoveth that
the exchange be by deed indented.

248 And so it is if exchange be taken of one
acre of land, and of rent issuing out of another
acre of land, for common for three beasts, in
another acre of land, and also for another acre
of land, and all the land is in one County,
the exchange ought to be by deed indented, &c.

And so it is if one land onely is not taken for o-
ther land onely, no: one acre onely is not ta-
ken

ben in exchange for Common onely, &c. the land and the rent are taken in exchange for the Common, and the land, and the is not parcel of the Land, nor appendant. Nor the Common is not parcel of the taken in Exchange, nor appendant.

249 But if I. S. be seised of a Manor which he hath Common appendant or tenant. And T. K. is seised of another Manor unto which he hath a Willain regardant, and both Manors are in one County, and an exchange is betwixt them of the Manors, Common shall passe unto the one with Manor, and the Willain unto the other the Manor without deed. But they shall distrain for the services of the Tenants of Manors without their attornment.

M. 9 E. 4: 39. 250 But if I. S. have an office unto land is appertaining, and T. K. have a issuing out of the land of a stranger, and the Land is in one County and the office be used and exercised in the same County, exchange thereof is taken betwixt them, it hoobeth that such exchange be by deed in *Causa pater*.

251 And it is to be known, That notwithstanding that exchange be taken between men, or single women of two acres of land deed, and in the Habendum of the same is recited that every one shall have the land put in exchange with divers other acres have in excambium *prædicta* which were cited in the premisses of the deed. These shall not alter or make void the exchange cited, and rehearsed in the premisses of deed. See divers other cases concerning

in the Chapter of Deeds, Mutatis mu-

And it is to be known, That every exchange ought to be made by the word (Excam-) or by another word of the same effect, by the word permutatio, &c. And therefore, something shall be said thereof. Then, what things may be taken in exchange, and what estates the parties to the exchange ought to have, and lastly, how the estates of the parties unto the Exchanges ought to be treated &c.

And it is to know, that it hath been said, that in every exchange the word (Excam-) ought to be, or, &c. as well as in every Frank-marriage, these words (Frank-marriage) ought to be, and as well as in every Frankalmoign, the word (Frankalmoign) ought to be. And therefore if I give to I. S. one acre of land by deed indented, without any word of exchange, and for the same acre he giveth unto me another acre of land, in such manner and form, as I have given unto him, & either deliver his deed to the other as his deed, if liberty of leisin be made, the freehold shall not passe, notwithstanding that either hath given his acre to the other by the Indenture, To have and hold unto him and his heirs. But if either of them enter into the others acre by force of deed delivered unto them, they are tenants in fee.

And if exchange be made by word be-
tween two men in fee, of two acres of land,
where are in one County, & before their entry
of the exchange, Indentures are made
between

M. 45 E. 3.

20.

T. 38 E. 3.

1.

between them of the same acres in fee, word of exchange is expressed in the Indentures, and no libery of seisin is made in the Land; but either delibereth to other the Indentures as his dād, and either entereth in the others land, contained in the Indentures. Now either of them holdeth the land by the will of the other, and shall not take the land by force of the Exchange, for the Indentures doth conclude them so to claim the land. But if libery of seisin had been made in the Indentures, then the Indentures shall have effect as Feoffments, &c.

255 And it is said, If Exchange be made in fee of lands in one County, betwixt two men by word, and before their entry by force of the exchange, either of them delivereth the land unto the other, it takes effect according to the libery of seisin, and not according to the Exchange, taken quare. For when either enters into the other land to take libery of seisin, they are presently seized by force of the exchange, for the entry of either of them is lawful in the others land, which was assigned by force of the exchange: So that the libery of seisin to them made, they were seized in fee by force of the exchange, and cannot take libery of seisin of land where himselfe is seized, &c. But if there were no speech betwixt them of Exchange, the exchange was not made, then it shall be taken otherwise, &c.

256 And if speech be betwixt two men of exchange of certain land, and either of them levy a fine unto other of the same land,

the speech was without any word of exchange in the fine, it doth not take effect in exchange, because there wanteth the word of exchange: But it is said, it is not to have words of Exchange in a Fine,

And it is to know, That if any man exchange Land or other things by Fine, he shalld them to have two writs of Cobe-
 -ment, viz. one writ of ones land, and another
 -ment of the others land, &c. And it is to know,
 -ment if two Parsons of a Church exchange
 -ment their Benefices, by the word permutatio, and
 -ment either of them resigne his Benefice into the
 -ment hands of the Bishop, to the same purpose:
 -ment And the Patrons present them accordingly,
 -ment and the presentments make mention per viam
 -ment permutationis, this is a good exchange, if ei-
 -ment ther of them be indued liking the other, &c.

Now is to shew, Of what things ex-
 -ment changes may be: And as to that, It is to
 -ment know, that exchange may be of chattels per-
 -ment sonals, for chattels personals, and so it may
 -ment be made of chattels reals for chattels reals,
 -ment and freehold for freehold, and of inheri-
 -ment tance for inheritance, &c. And therefore if
 -ment exchange be made between l. S. and T. K, so
 -ment that T. K. giveth to l. S. his gown in exchange
 -ment for the horse of l. S. and l. S. giveth his horse
 -ment in exchange unto T. K. for his Gown, &c. it is
 -ment a good exchange; And so shall it be of other
 -ment things personals, mutatis mutandis. And in
 -ment the same manner shall it be of Chattels re-
 -ment als, and freehold, and inheritance, mutatis
 -ment mutandis, &c.

And if Lord and Tenant be, by fealty
 3 2 onely;

onely, or by Homage and Fealty, and change be made between the Lord and the Tenant by deed indented, so that the Lord give his Seignorie in exchange unto the Tenant for one acre of land of the strangers, & the stranger giveth the same acre unto the Lord in exchange for his Seignorie, and the Tenant attorneth, & the Lord enters into the acre so exchanged, &c. it is a good exchange, notwithstanding that the homage and the fealty be not valuable, so as they shall not be Assets upon a lineal warranted descent, & the issue in tail, &c. For a man may give a seignorie for money. And by the same law a man may give an acre of land in exchange for such seignorie, &c. and a seignorie by service may be exchanged for land, tenement, rent, or service, &c.

260 But a seignorie in Frankalmoin cannot be exchanged with any person, with the Tenant in Frankalmoin, but that the exchange of a seignorie in Frankalmoin with a stranger, proveth the seignorie to be in esse: and no person shall have a seignorie in Frankalmoin, if not the Tenant or his heirs, &c.

261 But quære, if Lord and Tenant give fealty and 12 pence, and the Lord exchange his seignorie with the tenant for the tenement, and the tenant convert it, by deed indented, if the exchange be good or not; for some say, it is good, because that immediately upon the death of the Lord, &c. the seignorie is extinguished in the tenancy, so as the Lord shall have the tenancy, and the tenant shall have nothing of the tenancy, and so, &c. This argument

made in this manner, that is to say,
the Lord granted his seignorie unto
tenant by deed upon condition; and in
the same case, if the condition be broken, he
shall have his seignorie back again. And te-
nant for life may grant his estate by deed in-
deed upon condition unto his Lessor, &c. In
the same manner is it of a Seignorie granted
in exchange: For every exchange compre-
hends in it a condition, &c. And so shall it
be an exchange by deed indented of Land,
rent issuing out of the same land, &c. And
other arguments may be made in this
case, Ideo quare, &c.

But if a Manor or Land be given un- T. 9 E. 4.
to, and I in Exchange for the same Ma- 21.
nor Land grant unto my Donor a Rent,
issuing out of the same Manor or land, &c.
it is not available to take any effect as an ex-
change, &c.

But if I grant a rent-charge issuing 30 E. 1.
out of my land unto I. S. in exchange for one Exch. 15.
of his own land, &c. it is a good exchange,
I may exchange rent which I have issu-
ing out of the land of I. S. with T. K. for his
land, Tenement, Rent, or Common, &c.
it is good with Attainment, &c. And yet
if of us the Exchangers die before at-
tainment, it is not good.

And if three acres of land with an
appurtenance unto them appendant are given in
exchange by T. K. unto I. S. for a chamber as-
signed by the said I. S. at the election of the
T. K. And I. S. assigne unto T. K. two
chambers, viz. an upper and a lower, and M. 9 E. 4.
chose to have the upper chamber, and enters 38.
I 3

enters therein, and I. S. enters into the same, &c. it is a good exchange, and yet it is not certain at the beginning, &c.

265 So shall it be, if I gibe my Manor of Dale in exchange unto T. K. for his Manor of Downe, &c. if exchange be made betwixt me and T. K. that after the Feast of Christmas T. K. have my Manor of Dale in exchange for his Manor of Dale, &c. it is a good exchange, either of them may enter into the others Manor, after the Feast of Christmas, &c. If I gibe unto T. K. my Manor of Dale in exchange for the Manor of Dale, which he shall have after the death of his father, by which he is heir unto his father, and his father is living at the time of the exchange, it is a good exchange.

266 But if a man releaseth his Manor, which he hath yearly to take in a Manor, and deliver the release in exchange for the release giben unto him in exchange for the release, it is a good exchange, and yet the release is effect by way of extinguishment, of the others. But it is as good advantage to the Tenant to be discharged of the rent, if so many Cesters had been, &c. unto him.

267 And so shall it be, if I have a Manor, suing out of the land of I. S. and I give the release the same rent unto I. S. in exchange, for other land, Tenement, Rent, &c. mon, &c. Or to have a way over his land, &c. Yet it is said by some, that in exchange there ought to be a transmutation of the possession of the one Exchanger into

Exchanger, otherwile the Exchange is good. But the same is not true, as appears by the cases aforesaid.

168 And it hath been held, That if I be seised of land to which I. S. hath right of action, and I give unto him Tenements in exchange for a release of his right, that it is a good exchange, because I may purchase such release for my money, and by the same reason I may give Lands or Tenements in exchange for the same release, and also I have equal right by the Release unto the estate which I give, and it shall be a good adban-
 16 E. 3.
 Exch. 2.
 M. 9 E. 3.
 56.
 otherwise, &c.

169 And the same law is, of exchange of land, and adban-son by deed indented for a release unto a usurper of his right unto another adban-son, when his incumbent hath been in possession by six moneths, &c. Yet against that, it may be said, That the Exchange in the first of these two latter cases is not good, because by such Release, &c. the estate of the Releasee is not altered, and by such release he doth not take more issues and profits of it, &c. And against that, it may be said, That he doth have this land without encomb-
 31 E. 3.
 Assets 5.
 Extinctionem inde, &c. And a rent descended
 into the issue in tail by way of Extinguishment, shall be said to be Assets, &c.

170 And therefore, if Father, Tenant in tail, and son be, and the father is seised of a Rent-charge issuing out of the land of the son in fee, and discontinueth the land entailed

with warranty. Now this Rent descends
unto the issue by way of extinguishment,
be Assets for the value thereof, because it is
valuable, and as great advantage unto him
that he the same extinguished, as to have so
rent in possession, and to be discharged of the
rent: But a right of Cure or of action, or
of Lands or Tenements, &c. descended
the issue in tail shall not be Assets, &c. because
that such Assets are not taken by the equity
the Stat. of Gloucester, cap. 3. See the Stat.
&c. But exchanges are at the Common Law
and therefore common reason shall serve
them.

271 And if disseisor and disseisee be, and
disseisee releaseth his right unto the disseisor
in exchange for another acre of land, &c. it is
good exchange, Causa patet. But if the dis-
seisee had granted his right unto a stranger
who had nothing in the land exchanged for
acre of land, this exchange had not been good
for the stranger took nothing by the grant
43.

3 E. 4. 26.
Exchange

4.

P. 7 H. 4.

43.

272 And if the heir enter after the death
his father and assigne Dower unto his mother
in exchange for another acre of land, it is
void exchange, because the tenant in dower
is not in the land which she hath for her dower
by the heir, but by her husband, &c.

273 And if disseisor & disseisee be of one
of land, & the disseisor exchange the same
of land with the disseisee for another acre
land, &c. this exchange is not good, if it be
by deed indented, or by fine, &c.

274 And it is to be known, if an exchange
is good, notwithstanding that the things
exchanged be not of equal value, as Mr. Littleton

well shewed in his first book in the chap.
 Tenant for years, &c. And it is to know, &
 in this book are divers cases expressed & deter-
 mined against the opinion of some men; Sed
*in ista Libris non paucis, & fide non data unius
 hominis vel duorum hominum dictis, vel uni libro,
 sed tunc auctoritatem sufficientem huic libello
 concordantium compertum habebis.*

Now is to shew, what estates the par-
 ties to exchanges ought to have: and as to that
 note. That the estate of either party unto the
 exchange ought to be equal, as Mr. Littleton
 hath well declared; And therefore, If an
 estate for life be expressed unto one party upon
 the exchange, and no estate be expressed unto
 the other party, &c. the exchange is not good;
 notwithstanding that both parties to the
 exchange have an estate of freehold, yet the
 estate for the terme of another mans life is
 not so high an estate of freehold, as the estate
 of him, who hath an estate for the terme of his
 own life, &c.

T. 38 E. 3.

15.

T. 34 E. 4.

12.

But if A. lease for life be of one acre of
 land, and he giveth one other acre of land un-
 to his Lessor in fee tail for a release of all his
 right in the acre which he holdeth for term of
 life, to have and to hold the same acre unto
 him and the heirs of his body begotten, this is
 a good exchange.

But if I. S. and T. K. are enfeoffed of
 one acre of Land, To have and to hold the
 same acre to them, and to the heirs of T. K. and
 C. D. giveth unto them another acre of land,
 to them in fee in exchange for the same acre of
 land, which they are infeoffed as aforesaid. It is
 to be noted, that this is no good exchange but for the
 moitie

moitie which appertaineth unto T. K. because that he hath fee in the moitie of 2 acre, and if he was infeoffed, executed to such intent to put and best the same in another person or alienation, that is to say, by feoffment, change, &c. and as unto the moitie which appertaineth unto I. S. the exchange is not good because he departs but with the freehold, and he is to take a fee-simple in the other land, &c. But against that it may be said, that the exchange is good for all, because that the fee-simple of the whole acre of I. S. and I. K. is in T. K., &c. And then when I. S. and T. K. joyn in exchange of the same acre, the whole acre with the fee shall passe to C. D. so that he hath fee-simple executed in the same acre, and I. S. and T. K. have like estate executed in the same acre of land, which C. D. gave in exchange unto them, as they had in the other land, and so the estates of the parties in the exchange are equal, &c. Ideo quare.

278 And also it may be said, That in the same case the exchange is void in all, for it is argued before, that the exchange is void for the moitie unto the said I. S. and when it is void in part, it is void in all, &c. As to that it may be said, That this reason is to take effect where the exchange is made of things which are entire, &c.

T. 9 E. 4.
22.
2 E. 2. Cui
in vita 17.

279 If a man seised of lands in fee in the right of his wife, giveth the same lands in exchange for other lands in fee, &c. this exchange is good until it be defeated by the husband or her heir, &c. So shall it be, if the husband and wife joyne in an exchange, &c. If a Lessee for years of land and his Lessor joyn in exchange

exchange of the lands leased in fee, unto a stranger for other lands in fee, to each party; or to some, that this exchange is void unto the Lessee, and good for the whole land unto the Lessor; for the Lessee for years may surrender his land unto his Lessor of the land by word: Then when the parties, viz. the Lessor and the Lessee joyn in exchange in fee, it shall be said the surrender of the Lessee to his Lessor, as well as if Lessee for years of land, and his Lessor joyn in a feoffment of the same land leased unto a stranger, &c. And so, &c. *ta-men quere certitudinem.*

180. If Disseisor and Disseesee be of one acre of land, and they joyne in exchange of the same acre of land in fee unto a stranger for another acre of land in fee, and the exchange is made of the land, this exchange is void to the Disseesee, & good to the Disseisor for the whole land: For the Disseesee at the time of the exchange had nothing in the land but a right, the which he could not give or grant unto a stranger, but may vest it in the person of the Tenant of the freehold of the same lands divers ways, by extinguishment, &c. And at the time of the exchange, be to whom the exchange was made of the land, had nothing in the land, &c.

181. If two Joynt-tenants are in fee of one acre of land, and they exchange the same acre of land in fee with a stranger for another acre of land, To have and to hold one moitie of the same acre unto one joynt-tenant in fee, and to have and to hold the other moitie of the same acre unto the other joynt-tenant in fee, this is a good exchange, &c. So shall it be, if two
 Tenants

Tenants in common of land, joyne in exchange with a stranger for another acre, have and to hold the same acre unto them jointly, &c.

282. And if the disseisor of one acre of land enfeoffeth a stranger of the same acre of land, and the feoffee giveth unto the disseisor another acre of land in fee, in exchange for a release of all his right, in $\frac{1}{2}$ acre of land whereof he was disseised, this is a good exchange, for notwithstanding the heirs of the feoffee are not expressed in the exchange, the right of the disseisor is extinct in the feoffee by force of the release according to his possession, which he had at the time of the release made unto him, the which was in fee, and so the exchange is good.

283. But if Lord & tenant be, by fealty and 12 pence, of one acre of land, & the tenant grants another acre of land unto the lord in exchange in tail, for a release of all his right in the tenancy, &c. it is no good exchange, because that by the release the fee-simple of the Lord is determined, and the Lord shall not have but an estate in tail in the land given unto him in exchange for the release of his right, &c. So shall it be of all the like cases, &c.

284. Now is to shew, in what time the estate of exchanges ought to be executed. And as to that, know, that the estate of exchanges ought to be executed in the lives of the exchangers, otherwise their heirs shall avoid them, if not that it be in special cases.

285. And therefore, if an exchange of land be betwixt two, and one entereth according to the exchange, and the other exchanger dieth before any entry made by him, he who entereth shall

shall not be the first person who shall defeat the exchange : But is the heir of the exchanger who entered not, entereth into the land into which the other hath entered by force of the exchange, and putteth him out as he may, then he, viz. he who is put out, may enter into the land which he gave in exchange.

And it is to be known, That at all times during the lives of the parties unto the exchange, either of them may enter according to the exchange, at what time he please; if the possessor be not dejected out of them, by an elder title, &c. as by an entry for a condition broken; or by an entry by the disseisor, or his heirs, if those who made the exchange, have, or any of them hath the land so given in exchange by gift, &c. Or by recovery upon an elder title, &c. Or by alienation in Mortmain, made before the exchange made; Or by any other lawful cause, &c.

And some have said, That in some case, the party unto the exchange shall enter, if the possession of the land be dejected out of the other party unto the exchange, notwithstanding that it be not dejected out of him by an ancienter title : As put case, an exchange made of land in fee, between an Abbot and a lay-man, & the Abbot entereth into the land of the lay-man by force of the exchange, and the lay-man doth not enter into the land put in exchange by the Abbot, & the Lord of whom the land is holden, in which the Abbot hath entered by force of the exchange, entereth into the same land within the year & the day after the exchange, into land aliened in Mortmain; In this case we say, that the Abbot shall retain the land which

which he put in exchange in his possession, and the other party to the exchange shall have his own land again which he himself put in exchange unto the Abbot, because the possession thereof is out of him in the possession of the Abbot by his own act, and therefore the Abbot cannot retain in his possession against the Lord of whom it was holden. But against that it may be said, That for as much as the Abbot hath executed the exchange he shall for no cause disagree unto the same, &c. if not, that it be in very special case. And every exchange is conditional, *Idco quare*, &c.

M. 45 E. 3.
Exch. 10. 288 And it is to know, That if two Parsons of two several Churches exchange Benefices, and resigne them into the hands of the Ordinary to the same purpose. And the Patrons make presentments accordingly, and one of the Parsons is admitted, instituted, and inducted, and the other Parson is admitted and instituted, but dieth before induction, the other Parson shall not keep the benefice in which hee is inducted, for the exchange is not perfected, because it is not executed, &c.

289 And if the Reversion of one acre of land be exchanged for another acre, &c. and the exchanger of the reversion dieth before assent made unto him, his heir may enter on the other exchanger, and put him out of the land put in exchange by his father, &c.

16 E. 4. 8.

290 But if a man seised of land in the right of his wife, and he and his wife exchange those lands for other lands in fee, and the exchange is executed, and the husband

and the wife enters into the lands taken in exchange, notwithstanding the death of the husband, &c.

191. But in the same case, if the husband alone had made the exchange, the wife may assent to it, notwithstanding his entry in the same lands, after the death of her husband, for then by her entry he is not seised of the lands by force of the exchange, because that he is not party thereunto, and she cannot be privie thereunto, &c.

192. If a man Exchange be had betwixt two men of lands, and before their entry by force of the Exchange they are disseised of the land put in exchange, and the Disseisor dieth thereupon, and the parties unto the exchange enter into the lands put in exchange accordingly, and put out the heire of the Disseisor, this entry cannot be said an execution of the exchange, because that their entry was taken away by the dissent, &c. But if the Disseisor had recovered the same lands against the heir of the Disseisor by feveral writs of Entry in le per, &c. and had them in execution, then they might enter according to the exchange, and this entry shall be a good execution of the exchange, &c.

193. And if a man be seised of land in the right of his wife in fee, and thereof enfeoffeeth a stranger, and takes back an estate unto him and his wife, and unto a third person in fee, and they three joyne in exchange of the same lands in fee, for other lands unto a stranger in fee, and the exchange is executed, and the husband dieth, and the wife doth occupie the land taken in exchange with the third person;

By

8 E. 2. It.
Cau. Cui
in vita 28.

By this occupation of the land he shall be concluded to have any part of the other land that was given in exchange for this land, &c.

294 And if Tenant in tail be of one acre of land, and he exchange the same acre for another acre with a stranger in fee, and the exchange is executed, and the tenant in tail dieth, and his issue enters into the land taken in exchange by his father, he hath perfected the exchange during his life, &c.

T. 16 E. 3.
exch. 2.

M. 4 E. 2.

exch. 3.

H. 12 H. 4.

12.

295 And if an Infant exchange land, and occupie the land taken in exchange, when he cometh of full age, the exchange is executed, &c. And it hath been said, that if a man be seised of a Manor, viz. of one moiety in tail, and of the other moiety in fee, and giveth the Manor in exchange for another Manor in fee, and the exchange is executed, and the Tenant in tail dieth, and the issue in tail (disagreeing unto the exchange) enters into the whole Manor put in exchange by his father, the exchange is avoided for the whole, because the exchange was made of one entire thing for another entire thing, *tamen quære*. For in the same case, if the exchange had been impleaded of a parcel of the same Manor, whereof one moiety was in tail, &c. and had vouched, and the issue entered into the warranty, and lost, he shall not recover in value, but for the portion on which is lost, &c.

296 And if a man be seised of two acres in fee tail, and of another acre in fee, and exchange these three acres with a stranger for another acre in fee, and the exchange is executed, and the Tenant in tail dieth, and the issue in tail (disagreeing unto the Exchange) enters

all the three acres put in exchange by his father, his entry is lawful in all the tailed land, and for that land the exchange is as before, &c. But into the third acre of which his father was seised in fee, his entry is not lawful; and for that acre the exchange shall stand. So an exchange is avoided in part and all land in part, &c. Quære, if the other exchanger can enter into any parcel of the land which he put in exchange, because there is not an equality of the value.

And if I. S. be seised of white acre in fee, and he exchangeth the same, and black acre wherein he hath nothing with a stranger, for another acre in fee, &c. the exchange is void as to black acre: But notwithstanding it is lawful, I. S. shall have the whole land which was put in exchange by the stranger; for the law saith, there is no care of the value of the land, &c. quod verum est, &c. tamen quære, whether it seemeth it is not within the same reason, &c.

And if a man of unsound memory be seised of land in fee, exchangeth the same with a stranger for another acre of land in fee, and the exchange is executed, and he of unsound memory dieth, and his heirs enter into the land taken in exchange by his father, now he shall not avoid this exchange, &c.

And it is to be known; That in some special case an exchange may be executed in the parties to the exchange, & may be avoided by the same parties. As put case, a man granteth to me common for 6 beasts in his meadow, and I exchange for a way over my land for so. B. 4. 213

carry the hay growing upon the same
unto his house in Dale. And I grant the
way unto him, in exchange for the same
ec. and the exchange ought to be by
indent, ec. And I use the common by law
the exchange, and the other party to the
exchange, shall use the way according to the
exchange, and afterwards he will not suffer
to use my Common, then I may not suffer
to use the way, and the reason is, because
they are yearly executory, ec. The same may
may be made, if a rent be exchanged for
rent, ec. *Idco quære.*

CHA

CHAP. V.

Dower.

Now are we to speak of Dow-
er. And as unto that, know,
That as Mr. Littleton hath
well shewed and set forth in
his first Book, there are five manner of Dow-
ers, which appear in his chapter of Dowers,
and many and diuers good cases concerning
dower, are there put by my Lord Littleton.
And also there are so many good and necessary
cases concerning Dower put upon the writs
of Dower, in Natura Brevium, with the additi-
ons, that a man can hardly speak any thing
more concerning dower, beyond what is shew-
ed and said in the same books. And yet not-
withstanding that, something shall by the
grace of God be said here concerning Dower.
And as unto Dower at the Common
Law, it is to know, Where husband and wife
are, and the husband is seised of such estate
during the marriage, that the issue which by
possibility they may have between them dur-
ing the marriage, by possibility may inher-
e by the Common Law. The wife shall be
endowed

entowed of the estate and possession
the Husband hath be not lawfully
ed, &c. if not that it be in speciall
&c.

302 And therefore if Tenant in gen
tail, take a wife, and enfeofeth a stran
and takes back an estate unto him & his
M. 14 E. 4. in special tail and the wife dieth, and he
30. marieth another wife, and hath issue and
the second wife shall not be endowed, re
issue is remitted unto the general tail. But
second wife shall not have dower there
because that her husband was not seised
such estate, &c. during the marriage betw
them two, &c.

303 But if Lord and a woman Tenant
of one acre of land by fealty and twelve
rent, and they enter-marry, and the
band die, the wife shall be endowed
1 E. 3. 6. third part of the rent by way of return.
And yet the husband was not seised
in deed during the marriage celebrated
twixt them, for by the marriage betw
them, the Seigniorie was in suspense,
so continued during the marriage, as to be
ing an action, so as it did amount unto a
session in law, &c.

304 And of a seisin and possession in
the wife shall be endowed, &c. And if a
seised of Land, Tenement, or Rent, &c.
Fee, takes a wife, and during the same
riage, he marieth another wife, and
husband dies, leaving both wives, the
wife shall not have Dower, because the
riage betwixt them was void, &c.

39 E. 3. 1. 305 And if a woman take a husband,

ing the same Husband, she marrieth another Husband who is seised of Land in fee, and the second Husband die, she shall not have Dower of his land, Causa patet. But Alice at Dyle make a contract of Matrimony with C. D. and before the marriage solemnized betwixt them, she marrieth with I. K. who is seised of land in fee, &c. And I. K. dieth, she shall have Dower as wife of I. K. the marriages be not avoided; for they were unavoidable, &c.

306 And if a man seised of land in fee, make a Contract of Matrimony with I. S. and he die before the marriage solemnized between them, she shall not have dower, for she was his wife. And it hath been holden the time of King Henry the third, That a woman had been married in a Chamber, that she should not have Dower by the common Law, but the Law is contrary at this day.

307 And if a man seised of land in fee takes a wife, and enters into Religion, and is professed, his heire shall inherit presently, yet his wife shall not have Dower during the natural life of her husband, for the husband cannot be professed in Religion during the marriage, without the assent and agreement of his wife; and if he be so without her assent, the profession is void, &c.

308 And it is to know, That if Tenant in fee simple take a wife, and hath issue by the same wife, and the husband be attainted Felony, and dieth, the wife shall not be dowered; and yet his issue which he hath shall inherit, but he shall not inherit by the com-

mon law, but by the Statute of Westminster 2. Cap 1.

309 And it is to know, That if father son be, and the father is seised in fee of an acre of land, and exchanges the same acre with another acre with a stranger in fee, and the exchange is executed, and the father dieth, the son takes a wife, and enters into the acre taken in exchange by his father, and the son to the exchange who surviueth is impleaded for the acre taken in exchange by him, &c. the son voucheth to warranty the son, who entreteth to the warranty and loseth, &c. And the demandant hath execution against the Tenant, and the tenant ower in value against the vouchee of the acre, which the Tenant put in exchange unto the father of the vouchee, &c. If the vouchee dieth, his wife shall not have dower of this acre put in execution, because that the husband's covery in value shall have relation unto the time of the exchange made, which was before the title of the wife to have dower, so the possession of the husband is another and elder title before the marriage.

310 And if two men be coparceners of land in Gavelkind, and they make partition, one of them taketh a wife, and the other is impleaded of his part and prayeth in aid of his coparcener, and he joyn to him in aid, and the demandant recovers, and the Tenant is condemned pro rata, of that which remaineth in the possession of his coparcener, and the coparcener whom the aid was prayed dieth: his wife shall not have dower of that which the other coparcener had pro rata, because that the title of the coparcener who had pro rata, shall have

unto the time of the death of their Ance-
stors.

111 And if a man by deed indented enfeof-
ed another of land upon condition to be per-
formed on the part of the Feoffor, and the Fe-
offor take a wife, and the Feoffor perform the
condition, and the Feoffor dieth, his wife shall
have dower of this land, &c.

112 And if I enfeoff a man of land upon
condition that he shall enfeoff I. S. of the same
land before the Feast of Easter next ensuing,
and the Feoffor taketh a wife, &c. not tending
the feoffment unto I. S. before the same feast,
and I enter, and the Feoffor dieth, his wife
shall not have dower against me, because that
my entry shall have relation unto the time of
feoffment, &c.

113 But if Lord and Villein be, and the
Villein take a wife, and purchaseth land in
fee, and presently after the possession executed
the Villein by force of the purchase, the
Lord enters, and the Villein dieth, his wife
shall have dower against the Lord, because
his title both not begin but by his entry,
and the title of the wife to have Dower, was
before the same, &c.

114 But if Lord, and Heiress in grosse be,
and they enter-marry, and the Lord is seised
of land in fee, and the Lord die, she shall
have Dower against the heir of the Lord,
because she is his Heiress: But if the Lord
enfeoffed a stranger of the same land, she
shall have dower against the Feoffor, because
she is not his Heiress. But otherwise is it, if
it had been a Heiress Regardant to the land, of
which the feoffment was made, &c.

315 And it is to know, That it hath holden in divers books, as in thre or 4 books. That if there be Grandfather, Father and Son, and the Grandfather is seised of an acre of land in fee, and taketh a wife, and the father taketh a wife, and the Grandfather dieth, and the father entreteth and dieth seised, the son doth enter & endoweth his Grandmother, and the Grandmother dieth, the wife of the father shall not be endowed of the land where the Grandmother was endowed, because a woman shall not be endowed of a Reversion expectant upon a free-hold, and the possession of the free-hold by the endowment is vested in the Grandmother by a title, before the title of the father unto the free-hold: But if the Grandfather had enfranchised the father of the same land during the Marriage betwixt the father and his wife, In that case, after the death of the Grandmother, the wife of the Father shall have Dower of the same Land of which the Grandmother was endowed, because the possession of the Father which gave title to the wife to have Dower, was in the lifetime of the Grandfather, at which time the Grandfather could not demand dower, so that by the endowment of the Grandmother, the possession of the Father is not avoided, for the Grandmother had right unto the possession but in the time of the death of the Grandfather &c.

316 And if there be Grandfather, Father and Son, and the Grandfather be seised of an acre of Land in fee, and taketh a wife, and the Father take a wife, and the Grandfather dieth, and the son entreteth and endoweth

8 E. 2. It.

Canc. ass.

323.

Wol.

against whom the Grandmother
hath a writ of Dower, and recovereth and
execution. And the Grandmother dieth,
in this case the mother may enter into the land,
recovered by the Grandmother against her,
and retain the same land against the Donee,
inasmuch as she was endowed thereof by him. And
it shall it be, if the mother had recovered a-
gainst him in a writ of dower.

317 And it is to know, That if a man be
seised of land in fee, and giveth the same land
in tail unto a stranger, reserving to him and
his heirs twelve pence rent, and for default of
payment a re entry, &c. And the Donor taketh
a wife and dieth, & the heire of the Donor en-
ters into the land for the condition broken, the
wife of the Donor shall not be endowed of the
rent, nor of the land, &c. And the wife of the
Donee shall not be endowed, and yet if Do-
nor of land in general tail take a wife, & di-
eth without issue, & the Donor doth enter, the
wife of the donee shall have dower, & yet the en-
tail made her title is determined, &c.

M. 44 E. 3.

31.

318 And it is to know, That sometimes
the wife may choose to be endowed of one land,
or of other land, &c. or of a Seignory, or of a
tenancy, &c. or of land, or of a rent-charge,
or of a rent-seck issuing thereout, &c. but in
such cases she shall not have dower of both, if
that it be in special cases, &c.

M. 46 E. 3.

24.

319 And therefore if a man seised of one a-
cre of land in fee, taketh a wife, & exchanges
the same acre of land with a stranger, for an-
other acre of land, and the exchange is execu-
ted, and the husband dieth. Now it is at the
discretion of the wife to have dower of the acre
which

M. 13 E. 3.

Dow. 130.

M. 13 H. 3. which the husband put in exchange, or of
 3. acre which the husband took in exchange.
 Dower 93. she shall not have dower of both acres.

320 And if there be Lord and Tenant
 fealty and twelve pence rent, and the Lord
 taketh a wife, and purchaseth the Tenant
 fee and dieth. In this case it shall be at the
 liberty of the wife to be endowed of the Seign-
 iorie, or of the Tenancy, &c. So shall it be
 a man seised of a rent-charge in fee, take
 a wife, and purchase the land in fee where
 the rent is issuing, and dieth, it shall be at the
 liberty of the wife to be endowed of the land
 or of the rent, &c.

321 But if there be Lord and Tenant
 fealty, and the Lord taketh a wife, and the
 tenancy escheat unto the Lord, and he ent-
 and dieth: In this case it shall not be at the
 liberty of the wife, to have dower of the Seign-
 iorie, or of the Tenancy. But she shall
 be forced to take her dower of the tenancy,
 the reason is, because that the seigniorie is
 terminated during the coverture, by act of law,
 and it is no disadvantage unto the wife to be
 endowed of the tenancy; for if she be put out of
 possession of part thereof by a more ancient
 title, the seigniorie shall be rebidder for so much
 and if all the tenancy be recovered by a more
 ancient title, then the seigniorie shall be re-
 bidden in all, &c. and then she may have dower
 of the seigniorie, &c.

H. 12 E. 3. 322 If there be Lord, Mesne, and Tenant
 Dow. 131. by fealty and 12 pence rent, and the Lord
 taketh a wife, and releaseth all his right
 the tenant, and dieth, the wife shall be endow-
 ed of the mesnealtye, so shall it be in such cases

the Tenant fore-judgeth the mesne, &c. And the Disseisor of one acre of land enfeoffeth a stranger of the same acre with warranty, and the feoffee taketh a wife, and the Disseisor enfeoffeth a wife of Entre en le per, against the feoffee, and he vouch to warranty his feoffee, &c. and each recovereth against the other and hath execution, & the feoffee dieth, the wife of the feoffee shall have dower of the land which her husband recovered in value, and not of the land which he lost, Causa patet.

33. If there be Lord and Tenant by fealty and 12 pence rent, and the Lord take a wife and dieth, and his wife is endowed of the third part of the rent, and the Tenant dieth without heir, so as the tenancy doth escheat. In this case, the wife shall not be endowed of the tenancy, notwithstanding that it cometh in lieu of the feignorie, because it was not in the possession, and seisin of the husband: But she shall retain the rent which was assigned unto her in dower, as a rent Seck, and shall retain of common right, &c.

34. And it is to know, that some persons hold opinion, that in some special case, a wife shall be endowed of land, and also of rent issuing out of the same land. And therefore they say, that if a man be seised of four acres of land in fee, and taketh a wife, and enfeoffeth a stranger thereof by deed indented, and rendering unto him and his heirs three shillings per annum with clause of distress, and dieth, and the feoffee endoweth the wife of the feoffee of the third part of the land, the land which is assigned unto her in dower is discharged of this rent, and the whole rent is issuing out of the
residue

M. 13 H. 3. which the husband put in exchange, or of the
 Dower 93. acre which the husband took in exchange.
 she shall not have dower of both acres.

320 And if there be Lord and Tenant by fealty and twelve pence rent, and the Lord taketh a wife, and purchaseth the Tenant's fee and dieth, In this case it shall be at the liberty of the wife to be endowed of the Seigniorie, or of the Tenancy, &c. So shall it be if a man seised of a rent-charge in fee, take a wife, and purchase the land in fee whereof the rent is issuing, and dieth, it shall be at the liberty of the wife to be endowed of the land, or of the rent, &c.

321 But if there be Lord and Tenant by fealty, and the Lord taketh a wife, and the tenancy escheat unto the Lord, and he enfeoffeth and dieth; In this case it shall not be at the liberty of the wife, to have dower of the Seigniorie, or of the Tenancy. But she shall be forced to take her dower of the tenancy, and the reason is, because that the seigniorie is terminated during the coverture, by act of law, and it is no disadvantage unto the wife to be endowed of the tenancy; for if she be put out of possession of part thereof by a more ancient title, the seigniorie shall be rebidder for so much, and if all the tenancy be recovered by a more ancient title, then the seigniorie shall be rebidder in all, &c. and then she may have dower of the seigniorie, &c.

H. 22 E. 3. 322 If there be Lord, Mesne, and Tenant by fealty and 12 pence rent, and the Lord taketh a wife, and releaseth all his right in the tenancy, and dieth, the wife shall be endowed of the mesne, so shall it be in such case.

the Tenant fore-judgeth the mesne, &c. And the Disseisor of one acre of land enfeofeth a stranger of the same acre with warranty, and the Tenant taketh a wife, and the Disseisor sueth a writ of *Entre en le per*, against the Tenant, and he vouch to warranty his Feoffee, &c. and each recovereth against the other and have execution, & the Feoffee dieth, the wife of the Feoffee shall have dower of the land which her husband recovered in value, and not of the land which he lost, *Causa patet*.

33 If there be Lord and Tenant by fealty and 12 pence rent, and the Lord take a wife and dieth, and his wife is endowed of the third part of the rent, and the Tenant dieth without heir, so as the tenancy doth escheat. In this case, the wife shall not be endowed of the tenancy, notwithstanding that it cometh in lieu of the feignorie, because it was not in the possession, and seisin of the husband: But she shall retain the rent which was assigned unto her in dower, as a rent *Seck*, and shall be drawn of common right, &c.

34 And it is to know, that some persons hold opinion, that in some special case, a wife shall be endowed of land, and also of rent issuing out of the same land. And therefore they say, that if a man be seised of four acres of land in fee, and taketh a wife, and enfeofeth a stranger thereof by deed indented, and rendering unto him and his heirs three shillings per annum with clause of distress, and dieth, and the Feoffee endoweth the wife of the Feoffee of the third part of the land, the land which is assigned unto her in dower is discharged of this rent, and the whole rent is issuing out of the

residue of the land: And the reason is, because that the wife shall be endowed of the best session which her husband hath during the coverture; And the husband was seised of the Land during the coverture discharged of rent, and so, &c. And this rent is a rent-charge, and doth not come in lieu of the land. And the husband had an estate in the Rent during Coverture, &c.

325 If a man seised of three acres of land, taketh a wife, and dieth, and a Stranger abateth in one of the acres, and is seised in one of two other acres, and marrieth the same man, and enfeoffeth a stranger by deed indented, of the three acres, paying to him and his heirs 3 shillings rent, with clause of distress, and dieth, now all the three acres are charged with the rent. But if the heir of him whose death the abatement was, recovers the acre of land in which the abatement was, and assigns the same acre unto the wife for her Dower, yet the wife may have dower of the rent, for this acre is as if it were never charged, and the whole rent is issuing out of the two other acres, &c.

326 And if a man seised of three acres, taketh a wife, and enfeoffeth a stranger by deed indented of two of the three acres, rendering 3 shillings rent, unto him and his heirs, with clause of distress, and the wife is endowed of the third acre which remaineth in allotment of the other acres; yet they say, that she shall have dower of the rent which is issuing out of the other two acres, *tamen quare*. For this is against the opinion of divers men, and against conscience, &c.

5 E. 2.
Dow. 143.
P. 12 E. 3.
14.

327 And it is to know, That if a man
 grant unto me a rent-charge in fee upon con-
 dition; that if I die, my heir within age, that
 the rent shall cease during his nonage, and I
 take a wife and die my heir within age, my
 wife shall not be endowed of this rent, because
 it is a condition indeed annexed unto the es-
 tate at the beginning of which estate the wife
 claimeth dower, &c.

328 And know, That if a man be seised of
 10 acres of land in fee, and taketh a wife, and
 enfeoffeth a stranger of the land, and the feo-
 ffe buildeth thereupon a Castle, or a Mansion-
 house, or other buildings, or otherwise doth
 improve it, so as it is worth more by the year
 when it was in the possession of the Husband;
 the wife shall not have dower but according to
 the value it was at in the time of the husband.

M. 17 H. 3.
 Dow. 192.

And yet if a Disseisor build upon land which
 he hath by disseisin, and the disseisor endreth, he
 shall have the building, &c. And so shall it be,
 if the feoffor upon condition entereth for the
 condition broken, &c. & difference is apparent.

329 But if a man seised of land in fee upon
 which there is building, so & by reason thereof
 is worth 4 l. more by the year and he taketh a
 wife, & enfeoffeth a stranger, who taketh down
 the building, and the feoffor dieth, The wife
 shall have dower according to the value of the
 land as it was at the time of the death of the
 husband, & hath not any remedy for & taking
 away of the building before the death of the
 husband, notwithstanding & the building were
 upon the same land in the possession of the hus-
 band during the coverture, for the wife hath not
 right to have dower before the death of the hus-
 band, &c. Tamen quære, of this case. 330 And

330 And it is to know, If a man be seised of three Manors in fee, and taketh a wife, and granteth a rent-charge issuing out of all the three Manors, and dieth, and the wife taketh one Manor by assignment of the heirs for her dower, in allowance of all the three Manors, now two parts of this Manor both remain charged to the distresse of the Grantor, notwithstanding the grant of the rent-charge was made during the marriage, and the reason is, because that as to the two parts she hath taken her dower against common right, according to common right, she ought to have the third part of every Manor for her dower. But in the same case, if she had recovered her dower, and such assignment had been made unto her by the Sheriff, she should have holden the same discharged, *Causa parer.*

331 But if a man be seised of three Advowsons of three several Churches, and taketh a wife, & granteth unto a stranger that he shall present to the next avoidance of the 3 Churches which shall first become void, and the Grantor dieth, and his wife bringeth a writ of Dower against the heir, before any Church is become void, and recovereth. And the Sheriff doth assign unto her the Advowson of one Church for her dower, in allowance of the other Churches which advowson assigned unto her doth first become void after the grant made by the husband, and the avoidance happeneth after the assignment of the dower: It seemeth unto some in this case, That the wife should not have this avoidance, but the Grantor should have the same, because that she is endowed against common right, for of right she ought

the third avoidance of each abbotsion
of each Church.

32 And notwithstanding that the assign-
ment be made by the Sheriff, it shall not pre-
judice nor ouste the Grantee of his right, be-
cause he is a stranger unto the assignment,
and also he cannot otherwise take advantage
of his grant but onely at this avoidance, to
menquere. But otherwise is it in case of a
grant of a rent-charge out of three Manors,
for when y assignment is made by the She-
riff of one Manor in allowance of all the
Manors, the Grantee may distrain for the
rent in the other two Manors, and in
every part of them, and it shall not be more
prejudicial unto the heir this way, than the o-
ther way, &c.

33 And it is to know, That a woman shall
not be endowed, if the free-hold and the in-
heritance be not in the Husband, Simul & se-
mel, during the marriage.

34 And therefore if lands be given unto
a woman, and unto the heirs of the bodie of
one of them begotten, and he who hath fee tail
take a wife and dieth, leaving him that hath
the free-hold, notwithstanding that he that
had the free-hold dieth, the wife shall not have
dower, because the estate tail was not ex-
tended to all purposes in her husband. And
if a stranger had entered after his death
who had the free-hold, the issue of the Donee T. 11 H. 7.
shall have a Formedon en le Discend. against 3.
him, and shall alledge the Explees in his fa-
vor; and so to such intent the estate was ex-
tended in the Donee, &c.

35 And if the Husband hath an estate P. 48 E. 3.
in 15.

in land, &c. by fine upon a grant and
for life, the remainder unto I. S. his
tail, the remainder unto the right heirs
of the husband, and the fine is executed. In
case the husband dieth living I. S. his
or any issue by him begotten, his wife
not be endowed, notwithstanding that
the son dieth without issue after the death
of the husband living the wife; *Causa patet*. But
if a lease be made of land for years, the remainder
unto I. S. for life, the remainder unto
the right heirs of I. S. And I. S. take a wife,
and dieth during the terme of years, his wife
shall recover dower: But execution shall stay
during the term of years.

336 And if a lease of lands be made
for the husband for life, the remainder to a stranger
for years, the remainder unto the husband
for life, and the husband die during the years,
the wife may recover Dower: But Execution
shall stay untill the Terme be determined,
for this mean remainder for years shall be no
impediment, but that the free-hold was suffi-
ciently joynd in the Husband Simul & Semel,
so that the wife to have Dower, &c.

337 If land be leased unto A. and B. for
the life of C. the remainder unto the right heirs
of A. and A. takes a wife, and C. dieth living
A. and B. and A. dieth living B. his wife
shall be endowed, because that Cestuy que use died
during A. the husband, so as the Free-hold and
the inheritance are joynd in the husband during
the Coverture.

H. 5. E. 3. 338 And if lands are given unto I. and
his wife in special tail, the remainder
unto the right heirs of the husband, and the

shall issue betwixt them, and the husband
take another wife, and dieth, his second
wife shall be endowed, &c.

9. If there be Lord and Tenant by fealty
and the Tenant leaseth the tenancy
unto a stranger, and the Lord takes a
wife, and the Tenant dieth without heir, and
the Lord dieth before the Lessee for
life, the Lords wife shall not have dower of
the Tenancy: but she shall be endowed of the
reversion of the Seigniorie, &c.

10. And if Grantor of a rent in charge in
fee take a wife, and the Grantor leaseth the
land out of which the rent is issuing unto a
stranger for life; And the Grantor of the
rent purchaseth the reversion of the same land,
and the Tenant for life attorneth, and the
Grantor of the rent dieth, leaving the tenant for
life, his wife shall be endowed of the rent, but
not of the Land, because the Freehold and in-
terest were not in the Husband Simul & se-
paratim during the coverture, &c.

11. Now is to shew of what things a wo-
man shall be endowed: And as to that, See
Summa Breuium, with the additions upon the
words of Dower, &c. Of a common without
issue a woman shall not be endowed, &c. 2 E. 3.
If a man grant unto me and my heirs to
have yearly so many Cesters in his wood in
such a place, as I & my heirs will burn in the same
wood of Dale, and I take a wife and die, my
wife shall not have dower of the Cesters, &c.
But a woman shall be endowed of a mill, &c. 1 H. 5. 1.
as to have the third profit of the mill, &c. M. 45 E. 3.
if the mill cannot be severed: And a woman
may have a rent allowed unto her out of the
land of the husband, &c. 16 AH. 4.
of

2 H.6. 11.
T. 13 E.2.
Dow. 161.

of a house for her dower of the house
may have a chamber of the same house
ed unto her, in allowance of her dower
house. And a woman shall be endowed
Millein in grosse as to have the services
third day. And a woman shall be endowed
an Abbowson in grosse as to have the
presentment. And a woman shall be en
ed of a Baylwick, as to have the third
of the profit thereof, and in such case he
be contributory unto the third part of
charge of the Office. And so in the like
ner she shall be endowed of a Hayr, Mur
randis, &c. And a woman shall have dower
a common in grosse which is certain.

343 And if a man grant unto me and
heirs to take yearly out of meadow three
of hay, and I take a wife and dye, my
shall have dower thereof, &c. tamen quare
a woman may be endowed of a villein re
dant and of an abbowson appendant, &c.

344 But if a man be seised of a Manor
for, unto which he hath common append
and taketh a wife and dieth, and two acres
land, parcel of the Manor are assigned
her for dower, in allowance of all the Manor
it seemeth in this case, that she shall not
common appendant unto these two acres
during the time they are in the possession
woman, they are not parcel of the Manor
and the Common is appendant unto the
Manor, tamen quare. But if the moitie
Manor had been assigned unto the wife
her dower by the name of the moitie of
Manor, it seemeth clear that she shall have
mon appendant to this moitie.

117 If there be Lord and Tenant by fealty
12 pence, and 12 bushels of wheat, &c. and
the Tenant take a wife and dieth, his wife shall
have dower of the 12 pence rent, and of the 12
bushels of wheat, &c.

118 but if a man hold of me and my heirs
homage, fealty, and to finde a Chaplain
Sundery Friday in the week yearly in the
church of St. Nicholas in Dale, in the Coun=
ty of Middlesex, at such an Altar for the prof=
it of me and my friends, and for my An=
sors souls, and I take a wife and die, my
wife shall be endowed of no part of this seig=
ny, and so shall it be in all the like cases,

119 But a woman shall be endowed of
her tenement, woods, &c. rent-charges, rents,
&c. But if annuity be granted unto
her and my heirs, by the Grantor and his
heirs, and I die, my heir shall have this an=
nuity against the Grantor, as also his heirs,
they have lands or tenements unto the ba=
ty in fee-simple descended unto them, and
my wife shall not have dower of it, Causa
120.

121 And if a man seised of one acre of land
take the same for life to a stranger, reserving s H. 2.
10 shillings rent to him and his heirs, and Dow. 184.
the Lessor taketh a wife, and dieth, the wife
shall not be endowed of this rent, and yet the
Lessor shall have the rent with the
person, and it shall be Assets in a Forme=
nule descend, brought by the same heir, &c.
122 So the wife of the Lessor shall not be endow=
ed of a reserved upon a lease for years unto the
Lessor and his heirs, &c. But the wife of the

Donor shall be endowed of a rent reserved to the Donor and his heirs upon a gift of land, &c.

349 But a woman shall not be endowed a use of land, or rent, notwithstanding she was such an inheritance in her husband, which issue, which by the possibility they have betwixt them might inherit, &c. It is to know, that in many cases a woman by her own act may prejudice her self in her dower, as if she commit Treason, murder, felony for which she is attainted, &c.

M. 2 H. 4. 7. 350 And if a man seised of black acre taketh a wife and dieth, and the wife takes of a lease for life of black acre, for that she cannot demand it against her selfe, Quia she accept of a lease of years for black acre, whether by this acceptance she shall be excluded of her dower during the terme, for ever, or any time, &c.

351 And if a man seised in fee of white acre lease the same acre unto a single woman for forty years, and the Lessor enter into a fine with the Lessor, and the Husband suffereth the terme to continue as it was, without any alteration, or other thing done therewith, and dieth within the terme, it is said, that in this case, the wife may have her dower notwithstanding that the term doth continue, because that at the time of the lease she was entituled to Dower: and notwithstanding that the term doth continue, it shall not ouster her of her dower, until the term be determined; because if it should be prejudicial to any person, it should be unto the prejudice of the wife her selfe.

And if there be husband and wife, and they are given unto them, and unto the heirs of the husband, and the husband dieth, and the wife bringeth a writ of Dower before a disagreement, and that after the death of the husband, in this case she shall have dower, for she shall not be compelled to take by purchase against her will, & that before the death of the husband, and the bringing of the writ of dower, is a disagreement to take by purchase, which disagreement shall have relation unto the time of the purchase: Quare, if the purchase had been made unto the husband and wife for the life of the husband, the remainder unto the heirs of the husband, because that estate the wife had determined by the death of the husband: And it hath been said, That a disagreement cannot be unto an estate, after the estate determined.

But it seemeth, that in this case the wife may disagree by bringing of a writ of dower, notwithstanding that the estate were determined, for otherwise by such means she might be outed of her dower in every purchase made by her husband; and yet during the marriage, she is alwayes by law under the government of the husband in such manner and form, as that she cannot give away any manner of profit arising out of the land without the leave of her husband, and she cannot disagree unto the same estate during marriage.

And it is commonly taken, that if a woman run away from her husband with another man in adultery, and be not reconciled unto him with his good will, and her

P. 1 E. 3.

15.

T. 43 E. 3.

T. 19 E. 3.

Dow. 94.

T. 9 E. 3.

29.

agreement, without the constraint of Church, she shall lose her dower, notwithstanding that she remaineth not with the adulterer: But if she remain with her husband after such her running away, with his consent, and without constraint, she shall have her dower, vide West. 2. cap. 35. And if a woman be ravished, and remain with the Ravisher against her will, she shall not lose her dower. But if she willingly run away from her husband, notwithstanding that she remain all her life time with the Adulterer against her husband, she shall lose her Dower.

355 But if a man seized of two Manors, taketh a wife, and when the husband dwelling at one Manor, the wife goeth to the other Manor, and when she is there cometh beth in adultery; it is said, by doing so, she shall not lose her Dower, because it cannot be intended a running away from her husband, for she remains at the proper Manor of her husband, and the Law will not say that she can dwell upon the Manor of her husband without the agreement of her husband taken in quære. And it is to know, That a man may delay her selfe of her dower, by detaining of the Charters which concern the inheritance whereof she demandeth from the heir, &c.

M. 19 E. 4. 356 And therefore, If a woman doth writ of dower against the heir of her husband &c. It is a good plea to say, that the husband doth detain from him certain Charters, shewing what Charters concerning his inheritance whereof she demandeth dower, &c. know, That such charter, or charters, &c.

the title which he hath by descent.

Otherwise it is no plea.

And such cause is not sufficient for the
to detain Dower of more land than the H. 22 H. 6.
doth concern, &c. And if in such case 42.

to detain a deed which doth belong unto M. 33 H. 6.

by reason of a reversion which de- 41.

unto him. It is a good cause for the

to detain her dower in the same land: but

of Charters concerning land of

which the heire is not seised, is no cause for to M. 22 H. 6.

under dower of the same land.

16.

And therefore if a woman bring a writ

Dower against the Feoffee of her husband,

Feoffee voucheth the heire of the husband

arranty, if the heire enter into the war-

and pleads such matter, it is no plea;

because he is no Tenant of the land, & there-

the deed doth not belong unto him: And 16 Ed. 3.

the heire who cometh into Court as tenant Dower 47.

except, such matter is no plea, because the

doth belong unto another as well as unto M. 18 E. 3.

55.

But if there be two coparceners of land, T. 7 E. 2.

after partition made betwixt them, their Dow. 150.

one bringeth a writ of dower against one P. 41 E. 3.

them, it shall be a good plea for her to plead 11.

the manner of the deed by the demandant, which

concerneth the inheritance whereof she de-

th dower, notwithstanding that the deed

concern as well the inheritance of her si-

as her own inheritance, &c.

But if a man seised of lands in fee take M. 6 E. 3.

he, and he hath issue a daughter, and dieth, 45.

with young with child, and the daughter P. 1 E. 3.

enter into the land, in such case such dower 12.

of evidences by the wife as before is said
caris mutandis, shall be no cause for the
 ter to detain her dower, and the reason
 cause it may be, that the wife to marry
 a Son, &c. And know, That the detainer
 a transcript of a Fine from the heir
 wife, is not a sufficient cause to detain
 dower. And it is to know, that no person
 justify the detaining of a dower, but the
 and then the same ought to be in manner
 form as is before said.

T. II H. 3.
 Dow. 187.

M. 8 E. 3.
 47.

361 And therefore it is well shewed and
 clared in the Annotations in Natura Bient
 upon the writ of Dower, That the Guardian
 in Knights service cannot detain the dower
 the wife for the detaining of Charters con
 cerning the inheritance of the heir. But the
 Guardian in knights service may justify the
 detainer of Dower, for obtaining of the mar
 riage of the body of the heir. And if a man
 take away the Infant, and deliver him to
 other man, yet it shall be a good cause for
 the Guardian to detain her dower for the
 done unto him, &c. if he cannot deliver the
 infant to him, in as good plight as he was
 he was taken away, viz. unmarried, if he
 unmarried at the time of the taking away.

6 Ed. 2.
 Dow. 144.
 47 H. 3.
 Dow. 174.

362 But if a woman as his Mother
 bring up or nourish her child, because he
 ways remained & dwelt with her husband
 with her from the time of the death of her
 band; and another man claimeth to have
 wardship of the infant, because (he saith)
 father held of him by knights service, & taketh
 the child out of the custody or possession of
 woman, this is no cause for the rightful

in Knights service to detain her dower.
 If an Infant be dwelling wth a stran-
 ger, and there brought up, at the time of the
 death of his father, & his mother taketh him
 into her house, & afterwards the stranger takes
 him again out of her possession, so as she cannot
 deliver the Infant unto the Guardian in
 Knights service, it is a good cause for to de-
 mand her dower, for the wrong which she did,
 in the efforcement, at what time she was te-
 nant to his action, as unto the wardship of the
 child, and such matter may the Guardian in
 Knights service plead, notwithstanding that
 he cometh into Court by the Voucher of the
 Infant being in his ward, for the wardship
 of the Infant by right doth not appertain un-
 to any person but unto him, if it be not by
 grant or agreement, &c.

And it is to know, That notwith-
 standing a woman will not go unto her hus-
 band into another County where he dwelleth,
 when he is wounded, & notwithstanding
 the death of the same wound, she will not
 bring an appeal of his death, yet she shall be
 awarded.

But quere, if the Husband lye sick in
 his house, where he & his wife are both dwell-
 ing, and his wife will not come to him in his
 sickness, if she shall have dower: and notwith-
 standing that a woman being in a frenzy, & of
 sound memory, kill her husband, or another
 man or woman, she shall not forget her dower, &c.

And it is to know, that the husband by
 his default may prejudice the wife in her dower, by
 his lachesse of entry, by his lachesse of suit, or
 by his lachesse of pleading, and by divers
 other

12 H. 3.
 Dow. 183.

P. 1 H. 7.

17.

other ads as shall be said: But also, that no possession was in the husband, either in law or in fact during the marriage there the loss of entry of the husband shall prejudice the wife of dower, if not that it be in special case, and therefore if a man seised of one acre of land in fee, be disseised of the same acre, and taketh a wife and dieth before his entry, his wife shall not have dower.

P. 21 E. 4.

60.

367 And if a man dieth seised in fee, and a stranger doth abate in the same land, and after the abatement the heir marieth a wife and dieth before his entry, his wife shall not have dower of the same land.

368 And if a man enfeoffeth a stranger on condition on the part of the feoffee, and the feoffee marieth a wife, and the condition is broken, and the feoffee dieth before any entry made by him, or by any other in his name, his wife shall not have dower of the same land.

369 And if I. S. seised in fee of one acre of land, exchanges the same acre with T. K. in another acre in fee, and I. S. entereth and executeth the exchange for his part, viz. for the acre which was put in exchange to him, and T. K. taketh a wife, and dieth before that I. S. entereth by force of the exchange, his wife shall not have dower of the one acre or of the other, &c. And the reason is, because the husband was not seised of that land, either in deed, or in law, during the marriage between them, &c.

370 And if a man hath judgement for recovery of land, &c. and marieth a wife, and dieth before entry or execution sued, his wife shall

shall not have dower, &c. But if the husband be seized in deed, or in law, during the marriage, then his laches of entry shall not pre-
judice the wife of her dower.

371 And therefore if there be Lord and Tenant, and the Lord marieth a wife, and the Tenant dieth without heir, and a stranger cometh, and the Lord dieth before his entry, his wife shall have dower of the tenancy.

372 And if land be leased for life, the remainder unto l. s. in fee, and l. s. marieth a wife, and the Lessee dieth, and a stranger cometh, and l. s. dieth before any entry made by him, &c. his wife shall have dower of the same land, &c. And if a man be seized of a Willain in grosse in fee, and the Lord of the Willain hath issue a son, which son marieth a wife, and the father dieth, and the son dieth before any seisure of the Willain, yet his wife shall be endowed of the Willain, &c.

373 And if a rent be granted unto a man in T. II H. 4. 66, and the Grantor doth accept of the grant, 88. and taketh a wife, and at the day of payment, the Tenant of the land doth tender the rent unto the husband, and he will not receive the same, but utterly refuseth the same, and dieth before any receipt of the rent by him, or by any other in his name, or for him, &c. and before any thing paid unto him in name of seisin of the rent, &c. yet the wife shall have dower of the rent, &c. But if in the same case, the husband had brought a writ of Annuity against the Grantor of the same rent, and had recovered in the same action, then the wife shall not have dower thereof &c.

374 And it is to know, That the husband may

may prejudice the wife of her dower, by
of suit. And therefore if there be Lord,
and Tenant, and the Tenant doth cease,
the Heire taketh a wife and dieth, his
shall not have dower of the tenancy, notwithstanding
that her husband had cause of action
for the tenancy, &c. and if a man seised in fee
of one acre, leaseth the same acre unto a stranger
for life, and after the Lessor taketh a wife,
the Lessee doth commit waste, and dieth, his
wife shall not have dower of this land.

375 And if there be husband and wife, and
the husband is seised of one acre of land in
wrong title, and is impleaded of the same
acre by him that hath right, who voucheth
stranger to warranty, who entreteth into the
warranty & loseth, & each of them hath judgment
for to recover against the other, and the
demandant entreteth, &c. and the husband dieth
before execution sued against the Vouchor, his
wife shall not have dower of this land, notwithstanding
that the heir of the husband sue
for the execution, and this land cometh in line
of the Land which the Husband was seised of
during the marriage betwixt him and his
wife, &c.

376 And it is to know, That for laches
pleading, the husband shall not prejudice his
wife of her dower, if not, that it be in special
cases. Notwithstanding that the Statute
of Westm. 2. cap. 4. recite, Quod si vir implacit-
us de tenemento reddat tenementum penitus ad
versario suo de plano, post mortem viri sui, Judi-
ciar. adjudicent mulieri dotem, si per breve petat,
&c. that is but a recital of the common Law
for the Common Law ought to be intended
when

where the husband had right, and he who recov-
ereth no right. And so is the Law at this
day, if the husband lose by default, &c. And so
was the common law before the making of y^e
statute, so that that statute is but an affirm-
ation of the common Law in that point.

¶ And therefore at the common Law be-
fore the making of that Statute, if a man had
been seised of land in fee by a rightful title,
taken a wife, and is disseised, and re-entereth up-
on his Disseisor, and his Disseisor bringeth
an Assise against him, and he confesseth the
assise, and the Disseisor releaseth the dama-
ges, and hath judgement to recover, and ente-
ring, and the husband dieth, his wife shall re-
cover her dower against him, who recovered
the Assise by the common law, because that
her husband had right, and he who recovered,
no right.

¶ And if a disseisor be of land who taketh
a wife, and the Disseisee releaseth all his right
against the Disseisor, and notwithstanding that,
brings a writ of Entry in the nature of an
Assise against the disseisor, and recovereth by
default, and the disseisor dieth, his wife may
recover her dower against the disseisee, because
at this time her husband had right by the re-
lease, and the Disseisee no right.

¶ But if he who recovereth by reddition
by default, had right, then it shall be other-
wise. And therefore if the heir of a Disseisor
land be in by descent upon whom the Dis-
seisor doth enter, and taketh a wife, against
whom the heir of y^e disseisor doth recovered by
default, or by default in a writ of entry in y^e
nature of an Assise, & the husband dieth, in this
case,

H. 14 h. 4.
31.

case, his wife shall not recover her dower writ, because he that recovered had right unto the possession, according unto the nature of his action, and the Husband was not seised of other possession during the coverture, but of possession which is destroyed and defeated by the recovery, &c.

380 But if a man seised of land in fee, hath a wife and is disseised, and the Disseisee dieth seised, and his heir is in by descent, upon whom the Disseisee doth enter, against whom the heir of the Disseisor doth recover by reddition, or by default in a writ of Entry in the nature of an Assise, and the Husband dieth, the wife shall recover her dower notwithstanding that he who recovered brought right unto the possession, according to the nature of his action, &c. and the reason is, because the Husband had an ancient seisin during the coverture before the writ brought, by which the recovery was, by force of which writ, the wife had title to have dower, and the ancient seisin is not defeated, and destroyed by the recovery, &c.

H. 5 E. 3. 7.

381 And it is to know, If in a plea brought against the Husband, he pleads nonconformity, which is found against him, by force of which the Demandant doth recover, the recovery shall not ouster the wife of her dower, if the Demandant had not right, &c. and if a Praecipe, &c. against the Husband, the Husband pleads joint-tenancy, &c. which is found against him, by force of which the Demandant doth recover, this recovery shall ouster the wife of her dower, unless the Demandant had right.

And if in a writ of Entry, en le poss, P. 12 E. 4.
 against the Husband, he houcheth himselfe to Dcw. 140.
 the talle; and sheweth for cause, that his
 gave the same Land unto him in tail, &c.
 that the reversion is descended unto him
 from his father, &c. and the Demandant tra-
 verseth the gift, which is found with him, by
 reason whereof he doth recover, and the Hus-
 band dieth: Now if the Husband had a release
 of all actions, or of all the right of the De-
 mandant to plead, and did not plead the same,
 his wife shall falsifie this recovery in a writ
 of Dower, &c.

And if Tenant in tail of land hath is-
 sue and dieth, and a stranger abateth and di-
 verseth, and his heir is in by descent, who
 is a wife, and the issue in tail being an ac-
 tion of Mortdancerster against the Husband who
 traverseth the points of the writ which are
 for the Demandant, by force of which
 he doth recover and entreteth, and the Husband
 dieth. In this case it hath been said, that the
 wife shall not recover dower of this land, be-
 cause that this verdict be attained by the hei-
 re in a writ of Attaint, &c. Yet it seemeth she
 shall falsifie this recovery in a writ of Dower
 immediately after the death of her Husband;
 in much as her Husband might have plead-
 unto the action of the writ of the Demand-
 ant, and he cannot have an Attaint, &c.
 And if she shall stay until the heir have de-
 termined the verdict by Attaint, then perhaps the
 wife will release &c. or perhaps will not sue
 an Attaint, and so the wife in despite of her
 shall lose her dower, which is not reasonable,
 in she was once entituled to have dower by
 the

the possession of her husband during the life, which possession had never been abated, if not by the Laches or pleading of the husband, because he might have pleaded a variation of the writ of the Demandant, &c. men quere, because that the judgement is given upon the verdict, within which verdict is found matter contrary and repugnant to matter which ought to be pleaded to the writ of the writ, &c. But if the entry of the Demandant had been lawful, &c. then the writ is clear, and without question, that the writ shall not falsifie, &c. for then the Demandant had been remitted by his entry, &c.

384 If a Disseisor be of one acre of land, and the Disseisor dieth seised, and his heir inheriteth and taketh a wife, and the Disseisor recover the land against the husband by default, in a writ of Entry ad terminum praterit, and the husband dieth, his wife shall falsifie this recovery in a writ of Dower. *Causa pater.*

385 And it is to know, that a Demandant in a writ of Dower shall not falsifie a recovery had against her husband by default, or Laches of her husband in not pleading a plea which goeth merely in abatement of the writ, if not, that it be in special cases: And therefore to say that her husband might have pleaded misnomer, &c. or joynt-tenancy, &c. are not causes to falsifie a recovery, &c.

386 But if she shew matter, proving that the Demandant had not right, nor cause of action, if not joyntly with a stranger, the husband or stranger by his deed of release which she sheweth forth, hath released all his right unto her husband.

(then Tenant of the land) before the
 was brought by the Demandant, &c. This
 matter to falsifie the recovery, for one
 of land recovered, &c. So shall it be, of
 such like cases, &c.

It is to know, that if the husband 13 Ed. 1.
 commit treason, murder, or felony, for which Dow. 172.
 is attained, the same shall ouste the wife of M. 15 B. 3.
 her dower, &c. But if after the attainder, the Dower 68.
 husband purchase a charter of pardon, now, of
 such estates of inheritance whereof her
 dower is lessed after the purchase of his par-
 don, &c. which inheritance the issue which
 he might have by his wife, might
 have by the Common law, &c. she shall have
 her dower, if it be not of such inheritances before
 the attainder, in the Chapter of dower, and in o-
 ther special cases. For notwithstanding that
 the husband is outlawed at the time of the attainder,
 the issue which the husband might have
 after the purchase of his Charter of par-
 don, is inheritable, &c.

But if the husband be out-lawed in
 such, &c. the same shall not ouste the wife
 her dower, for by such out-lawing he shall not
 lose either freehold or inheritance, &c.

If there be Lord and Tenant; and the
 Tenant take a wife, and afterwards ceaseth,
 in which the Lord bringeth a Cessavit, and
 recover, and entreteth into the tenancy,
 the tenant ceaseth. It seemeth clear, that the
 wife shall have dower, for no laches nor de-
 lay can be deemed in her wife as to the cessor.
 Some say, that the wife shall not have do-
 wer in this case, because that the cessor doth
 live in any act done by the husband, viz.

it is not his doing, and because it is against the Statute of Gloucester, cap. 4. But he until it be recovered by judgement, shall be barred by the remnant.

390 But if there be Lord and Tenant, and the Tenant lease the Tenancy unto a stranger for years, and the stranger cease, the Lord recovereth in a C. II. vii, and then the Lessee shall lose his Terme, *contra pater.* If there be Lord and Tenant, and the Tenant taketh a wife, and alieneth the tenancy in Mortmain, or letteth a crosse upon it, and the Lord entreth, and the Tenant dieth, the Lord shall have dower of the tenancy, &c.

P. 8 E. 3.
2c.

391 If the husband of his own will go into another Countrey which is inhabited by the Kings enemies & there willingly dwell with them, and doth aid and assist them against our Lord the King, his wife shall have her dower, &c.

392 If W. doth enfeof R. upon condition that if W. pay unto R. ten pounds at a certain time, that the feoffment shall be holden, if not, that it shall be of force, and R. take the wife, and at the day appointed W. doth pay the money and afterwards W. dieth, and by agreement betwixt the heirs of W. and R. the heir of W. payeth the money unto R. which the heir of W. hath the land, and afterwards R. dieth, his wife shall have dower notwithstanding this acceptance of the money made by the husband *Contra pater.* See cases concerning Dower in the Chapter De dote, Mutatis mutandi. See other cases concerning Dower in the first Book of Fleta. And upon the Statute of Dower

Breuium, with the Additions and Annotations, &c.

393 And because a woman who is entitled to have dower by the common Law, ought to have an assignment thereof made unto her. Therefore something shall be said shewing, what persons may assigne dower, and then of what things assignment of dower may be made, and then where the assignment of dower shall be good, notwithstanding that it be not made by metes and bounds, &c.

394 And it is to knowe, that assignment of dower made by a Disseisor is good, and shall not be avoided, if it be not be made by cobin or fraud, as shall after be said, if a woman have the thing in dower. T. ii E. 4.

395 But if a disseisor, abator, or intruder take land by cobin of the woman who hath right to have dower of the same land, and such disseisor, abator, or Entruder endow the woman, The Disseisor who hath right in the land, may avoid and defeat such dower by his entry into the land, &c.

396 And if l. S. be tenant of land, unto which a woman hath right to have dower, and be disseised of the same land by the woman or a stranger, or by the woman alone, and afterwards she endowes of the same land by herself, or by one of them, such endowment shall be avoided by the entry of the disseisor, because she shall not take advantage of the wrong unto which shee her selfe was party,

397 And therefore if the issue in tail doth sell the discontinuance of his Father of the Land

P. 7 H. 6. Land entailed, and thereof doth enfeoff his
34. dow. 2. father, and his father dieth, and the land
 descendeth unto him, yet he shall be tenant in
 Canſa pater. And if there be two or three
 more joynt-tenants of land, of which land
 woman hath right to have dower, and one of
 the Joynt-tenantes doth assign dower unto the
 woman according to her right, it is a good
 assignment, and shall binde his companions
 if he had assigned a rent issuing out of the
 land unto the woman for her dower, his
 companions shall not be distrained for the
 same rent, because he was not compellable by
 law to assign unto her a rent for her dower.

398 And if an assignment of rent be made
 unto a woman in allowance of dower, which
 she ought to have of the same land by a
 wife, an abator, or intruder, the Disseisor, or
P. 10 F. 3. who hath right unto the land, shall not be
Dow. 189. bounden by such assignment, notwithstanding
 that it be without any covin of the woman.

399 And if a man seised of land in the right
 of his wife, or joyntly with his wife, assigneth
 the third part of the same land to the wife
 for her dower, it is a good assignment, and the
 wife shall be bounden thereby, notwithstanding
 that the husband dieth living the wife
 when the husband alone out of Court doth
 nothing, which he and his wife by law are
 bounden to do, it shall be intended the act of the
 husband and the other, if not that it be in special cases.

400 And if a man seised of 2 acres of land
 in fee, taketh a wife, and doth enfeoff a
 stranger of one of the acres with warranty,
 and he dieth, and both acres are in one County,
 the heire doth endow his mother of his acre
 allowed

allowance of all her dower in both acres, it is a good assignment: For if the Feoffor had been impleaded by the woman in a writ of Dower, he might have vouched the heire, and the Demandant shall recover against the heire conditionally, and so, &c.

And if the heire leaseth for life unto a stranger, parcel of the land which he hath by descent from his father, and doth assigne unto his Mother parcel of the Land which he hath in possession in allowance of all her dower, as well for the land leased as for the land which remaineth in his possession, the assignment is good: And yet if the woman implead the heire by a writ of Dower, and he voucheth his Feffor, the wife shall not have judgment to recover against the heire, because he is bound unto the warranty by his father, who was husband to the woman. Quare, if in such case, the Feffor voucheth the heire generally, and the heire enter generally into the warranty, then it seemeth that judgment shall be given for the demandant against the Woman conditionally, &c.

And if there be three or four several Feoffors of land of which a woman hath right to her dower. And one of them assign parcel of the land unto the woman for her dower in allowance of all the Fefforhold which belong unto her husband, and she agree unto such assignment: It is said, That this assignment shall discharge the other feoffors against the wife for any dower, and so it seemeth the law is, &c. But some have said the contrary, for they say, That they cannot plead this

matter against the woman in several **Dower** brought by her against them, **quare**. And the Feoffor who made assignment cannot come into Court and plead this in the Nations brought against the other offes, because he is a stranger unto those ones, and there is not any means to bring him into Court, &c.

3 E. 3.
Dow. 96.

403 And assignment of dower by the guardian in Knights service is good, if the woman hath right to have dower of the land; and if the woman hath not right to have dower thereof, yet it shall stand good until it be avoided.

404 But the assignment of dower by a Guardian in Socage is not good as it standeth, because a writ of Dower doth not lie against him. The same law is of tenant by legn, Tenant by Statute Merchant, Tenant by Statute Staple, and by Lease for years. But an assignment of dower made by him who hath the freehold is good, if it be of a thing as may be assigned; and of which the woman hath right to have dower. And notwithstanding that the woman hath not right to have dower thereof, yet it shall stand good until it be defeated and avoided, &c.

405 Now is to shew of what things assignment of dower may be made. And it is to be known, That parcel of the thing of which the woman hath right of dower may be assigned unto her, if not, that it be in special cases. And therefore if a woman hath right to have dower of lands, tenements, rents, commons, and such like, parcel of the same may be assigned unto her in the name of dower.

is not necessary or requisite that the
 one part of the thing unto which she hath
 right of dower be assigned unto her: For if ^{7 H. 2. rec.}
 the fourth part, the fifth part, or the moiety be
 assigned unto her in the name of dower, for all
 she holds which her husband had, and she
 agrees therunto, it is sufficient, and it is a good
 assignment, &c.

10. And it is to know, that the heir is not
 compellable to assign unto his mother for her
 dower the capital messuage which was his
 fathers, or any part thereof, notwithstanding
 that his mother be dowable of the same
 messuage. But if the heir do assign unto her
 the same in allowance of other land, and she
 agrees thereunto, the assignment is good.
 And the heir may assign unto her other lands
 or tenements whereof he is dowable, in al-
 lowance of the same messuage, and if there be
 any other lands or tenements whereof he
 is dowable besides the said capital messuage,
 he may assign unto her a chamber in the
 same messuage, in the name of dower, in al-
 lowance of the same messuage, and he agrees
 therunto, it is a good assignment. But if
 he is not compellable to take the same
 as the messuages as it were an entire
 thing, &c. And it shall be but trouble and bur-
 den unto a woman, to have a chamber with-
 in the house of another man, and if she will not
 take unto the same, then the heir may assign
 unto her a rent issuing out of the same messu-
 age in the name of her dower, &c. And such
 assignment is good without day. And the
 law is of assignment of a common of
 dowers, or of common of pasture, &c.

of any other thing whereof a woman is capable.

407 But lands or tenements, where a woman is not dowerable cannot be assigned to her in the name of her dower in allowance of other Lands or Tenements whereof she is dowerable, &c. *mutatis mutandis*, &c.

408 And it is said, that all the land which the husband had in possession during the coverture cannot be assigned unto her in name of dower, notwithstanding that the husband were seised of such an estate during the marriage, that the issue which by possibility might have betwixt them, by possibility might inherit the same land, by the Common Law &c.

P. 7 E. 3.
9. do. 103. 409 And it is to know, that lands in Wales may be assigned unto a woman for her dower in allowance of all the freehold of her husband, &c. And by this assignment she shall be excluded to demand dower of any other land which her husband had within any part of England, &c.

P. 31 E. 3.
feir. 142. 99. 410 If a woman being a writ of Dower, &c. and hath judgement for to recover, between the judgement and execution the defendant assign unto her a rent by word out of the same land, whereof she demands dower, in allowance of her dower for the land, to which assignment she doth agree, shall be a good bar in a Scire fac. brought by a woman to have execution of the land recovered, &c. But in the same case, if the assignment had been by word of other land, whereof she is not dowerable, which land is not comprised within her demand, it is said that such an assignment

shall not be a barre in a Seire Facias
brought by the same woman to have execution
of the judgement given in the writ of
Dower, &c. because it is not pursuing unto
the judgement, and because it is by word,
which is sameth to be good Law, &c.

411 It is a common speech, That the dower
of a woman ought to be assigned unto her by
metes and bounds, if not that it be in the case
of tenants in common, &c. which is put in
the Chapter of Dower in the first book of M.
London. And yet in divers cases assignment
of Dower may be made without metes and
bounds.

412 And therefore if there be two men co-
partners of lands in fee-simple by the custom
of a fee-fine, and one of them taketh a wife,
and hath issue, and dieth before partition, &c.
and his issue entereth and endoweth his wife
generally of the third part of the moitie,
and he agree thereunto, it is a good endow-
ment, and yet it is not assigned by metes and
bounds, and by such assignment he shall hold
8 E. 2.
in common with other coparceners. And in Entric 75.

413 In the same case by one Heir, the issue might
be assigned unto the woman her dower in
common, viz. by metes and bounds. For
if he had made partition with his Uncle be-
fore the assignment might have been by metes
and bounds: But notwithstanding that, it is
made in the manner and form as it is made, as
M. 16 E. 3.
91.
it is said.

414 And it hath been holten, if the heire
of a man, &c. and assigneth unto his mother the
her part throughout the whole land, which
was his fathers, to occupie & same in common,
of

of which land he was dowable, and he
thereof entreteth and occupieth the same
him, it is a good endowment, canien, it is
at this day the Law is otherwise, 11
re, &c.

414 But if a woman bring a writ of
er of land, and recover her dower, and
forth a writ unto the Sheriff to put her in
ecution, &c. the Sheriff ought to put her in
ecution of the third part by metres and bounds
if he may so do, &c.

33 H. 3.

Dow. 203.

415 If a woman be endowed of the third
part of the profit of a mill, that is not cer-
tain, and yet it is good: and shee shall give
there toll-free, the same Law is of a Dale
milk, muratis murandis, &c.

416 And it is to know, That if a man
seised of three shillings of a rent-charge
and taketh a wife, and hath issue and
the wife cannot dissteine for the third part
this rent before assignment made, and yet
certainly appeareth what rent she is to have
&c. And notwithstanding that she bring
a writ of Dower of the same rent, and recover
eth; yet she can dissteine for no rent before
her the Judgment before execution made,
withstanding that the certainty thereof
appear. And how and in what manner
the Sheriff shall put her in seisin thereof,
the Chapter of Testaments, muratis mu-
dis, &c.

40 E. 22.

417 And if there be Lord and a woman
tenant by Fealty and three shillings rent,
they enter-marry, and the Lord dies,
wife shall have twelve pence of the rent for
dower of the Seigneurie by way of ransome

without any manner of assignement made
to any person, &c.

And it is to know, That sometime a
woman shall be new endowed. And as to that
land, that when the Lands, Tenements, &c.,
are lawfully devested out of her possession,
to the delight of her, she shall be new endowe-
d with the third part of that which doth remain
of which the seisin wherof she is dowable, is
unfranchised or unincumbered, if not, that it be in
special cases, &c.

And therefore, If a man be seised of
two acres of land in fee by rightful title, and
he purchaseth of another acre of land by disseisin,
and he taketh a wife and dieth, and the heire en-
sueueth and assigneth the acre which his Ance-
stor had by disseisin unto the wife in the name
of dower, in allowance of all the freehold
which her husband had, &c. And the Disseisein
entereth into the acre assigned unto her, and
he is put out, she shall be new endowed of the
third part of the two acres which her husband
had by rightful title, in such manner, as if
the other acre had never been in the possession
of her husband, &c.

And if Tenant in tail be of land, and
he and his wife make a discontinuance in fee, and
the Discontinuance taketh a wife, and hath issue
in fee, and the Discontinuance is not seised
of any thing during the coverture, of which
the wife is dowable, and his issue entereth, as
the issue whom his Mother bringeth a writ of
dower, and doth recover, and hath execution
of the third part by metes and bounds, and the
Tenant in tail bringeth a Formedon against the
Tenant in dower, and she voucheth the issue of
the

the Discontinuee, who entrencheth into the
 ranty, and loseth, and the Demandant in
 execution. Now, the Tenant in dower
 be newly endowed of the third part of the
 parts which remain, &c. notwithstanding
 that his issue hath encroached a stranger
 thereof, or of all: For notwithstanding
 the possession which her husband had (in
 she is dowable) be defensible, yet she shall
 dower thereof until it be defeated, &c.

43 Aff. p.
 32.

421 If a man seised of two acres of
 in one County, takes a wife, and encroaches
 a stranger of one of the acres with warrant
 and hath issue and dieth, and his issue comes
 into the other acre, and the wife brings
 writ of Dower against the Feoffee, and
 he voucheth the issue, &c. who loseth by this
 and the wife hath judgement conditional.
 To recover against the Vouchee, if he, &c.
 the Demandant sueth execution accordingly
 and she is put in execution of land, which
 Vouchee hath by descent in the same County
 where the dower is brought, as heir to her hus-
 band, of which land she is dowable, and the
 tenant holdeth in peace, and the Vouchee is
 restored to the land w^{ch} the wife recovered
 writ of Dower, in this case the wife shall
 a Scire facias against the Feoffee who was
 tenant in the writ of Dower; and notwith-
 standing that the tenant hath encroached a
 stranger of the same land before the Scire facias
 brought against him, yet his Feoffee shall
 be bounden by the judgement given in the
 writ of Dower, because that the judgement in
 writ of dower was given of the land con-
 onally, &c.

8 E. 2.
 Vou. 157.

M. 3 E. 3.
 50.

And if a man seized of land in fee takes a wife, and hath issue, and dieth, and the wife takes a second husband, and the issue enters into the land as heir unto his father, and assigns the third part thereof by metes and bounds to his mother by the agreement of her husband for her dower, in allowance of all the freehold which his father her late husband was seized of, and her husband which now is discontinues the same land in fee, and dies, the wife may have a writ in vita against the discontinuer of this land: and it hath bene adjudged, that she may refuse it, and be newly endowed according unto the value of the whole freehold, which was in the possession of her husband during the coverture, of which possession she was dowable, &c. *tamen quere*, because the husband and wife might have enfeoffed the issue to have endowed the same by a writ of Dower. And if they have done so, he shall not be newly endowed. But there appeareth a difference in this case, where she is endowed by writ of Dower, and where by the assignment of the heir, or by another person, without writ of Dower, &c.

And it is to know, That if the freeholder thereof be is dowable, he in the possession of divers persons by several titles; the writ of dower brought against one of them, shall recover but the third part of the freehold which is in his possession: So that a man or a woman who hath possession of part of a freehold (of which the woman is dowable) shall not be charged according to the possession of the whole freehold of which the woman is dowable, unless he or she will.

T. 4 E. 3.

36.

H. 33 E. 1.

Dow. 177.

244 Now is to shew, unto what Tenant in Dower shall be attendant, and what services. And as unto that, Tenant in Dower for the most part is attendant unto him in the reversion, &c. also he may be attendant unto Guardian in Knights service, and unto his executor during the time the heire of her husband is ward, &c. And he shall be attendant upon them, &c. by the rate and portion of the land as the Land doth amount unto which she hath in dower, if not, that it be in specialties, &c.

P. 33 E. 3.

Dow. 138.

425 And therefore if there be Lord, and Tenant, by Knights service, and he hath rent, and the Tenant taketh a wife, and hath issue, and dieth, his issue being under age, and the Wife seile the ward of the land, and of the land, and entreteth into the ward, and doth assigne the third part of the rent by metres and bounds unto the woman, and of the ward for her dower, she shall be attendant unto the Guardian in Knights service by twelve pence rent: and if the Guardian during the nonage of the heire, then she shall be attendant unto the Executors of the Guardian by twelve pence rent, until the heire shall be of full age, and when the heire cometh to full age, she shall be attendant unto him by twelve pence, &c.

12 Aff. p.
20.

426 And if there be Lord and Tenant by Fealty and twelve pence, and the Tenant taketh a wife, and hath issue, and is disseised of the tenancy, and dieth, and the Disseisor endoweth the wife, Now she shall be attendant unto the Disseisor by four pence, But

things a writ of Entry sur disseisin en le
 against the tenant in dower of the land,
 is holden in dower, and she sheweth forth
 the matter, and saith, that she claimeth
 the land, but in right of her dower,
 that she is ready to be attendant to whom
 the Court shall award, &c. In this case the
 Court ought to award, that she shall retain the
 land commanded for her dower, and that she shall
 be attendant unto the heir who is the demand-
 ant, and by this judgement the reversion is in
 the Demandant, and not before, and it seem-
 eth, that the Demandant hath not other remedy in
 the case to come to the reversion of the land
 when the wife holdeth in dower, &c. For if
 she had entered upon the tenant in dower, &c.
 she might have had an Assise, and recovered,
 because she had right to have dower, &c. and she
 cannot at the time of the assignment made de-
 mand dower thereof of any person, if not as-
 gainst the Disseisor who made the assignment,
 and the assignment was not made by Co-
 venant, taken quare, if he had any other re-
 medy to come to the reversion, &c. But now
 the wife shall be attendant unto the heir by
 force of the judgement, &c. and not unto the
 Disseisor, &c.

And in the same case, the heir cannot
 enter upon the Disseisor, and put him out of
 the two parts of the tenancy &c. And if
 against the reversion of the Tenant in dow-
 er a stranger, and the Tenant in dower
 shall be attendant unto the Grantor.

H. 31 E. 3.
 Dow. 131.

There be Lord, Mesne, and Tenant,
 the Tenant holdeth of the Mesne by three
 pence

pence, and the meſne holdeth over by 10 pence, and the Tenant taketh a wife, and the Lord doth releaſe unto the tenant all the land which he hath in the tenancy, &c. and the Tenant dieth; and his wife is endowed by the heir of the third part of the tenancy: ſhe ſhall be attendant unto him by one peny, and not by the third part of the twenty pence, becauſe ſhe ſhall be endowed of the beſt poſſeſſion which her husband had during the coverture, &c.

429 Lord and Tenant are by fealty and twelve pence; the tenant taketh a wife, and the Lord purchaſeth the tenancy in fee, and the eſſay is executed in him, and the tenant dieth, and his wife is endowed of the third part of the tenancy, now ſhe ſhall not be attendant for any rent becauſe that by the purchaſe of the tenancy in fee by the Lord, the Seigniorie is determined, and a thing which is determined, cannot be revived.

430 Lord, Heir, and Tenant are by fealty and twelve pence, the Tenant taketh a wife and dieth, and his wife is endowed of the third part of the tenancy by the heir of the husband, ſhe ſhall be attendant unto him for twelve pence: But if in the ſame caſe the Lord ſumount releaſeth unto the heir all his right in the tenancy, by this releaſe the Seigniorie is determined, and therefore the wife ſhall not be attendant unto the heir for any rent after the releaſe, &c. becauſe ſhe was attendant unto him but in reſpect of his charge over, &c.

H. 3 E. 3. 9
P. 10 E. 3.
25.

231 But if Lord and Tenant be by fealty and twelve pence, and the tenant giveth the tenancy unto I. S. in caſtle, to hold of him

by fealty and twenty shillings rent,
 1. s. takes a wife and dieth without issue,
 the Donor entrench and endoweth the wife
 the Dower, &c. she shall be attendant unto
 6 s. 8 d. For if the husband had been
 he should hold all the land by twenty
 shillings, &c. and he is endowed of the possessi-
 on of her husband, &c. And she in this case shall
 not be attendant unto the Donor in respect of
 an over-charge : But shee shall be attendant
 unto him by reason of a special reservation
 made by the donor, &c. And when she had the
 third part of the land, out of w^{ch} the reservati-
 on was made, it is reason that she should be at-
 tendant for the third part of the rent which
 was reserved, &c. And if in the same case the
 donor releaseth all his right in tenancy, unto
 the tenant who was Donor, yet she shall be at-
 tendant unto the Donor for six shillings eight
 pence, &c.

34 Aff. p.

43. If there be Lord, Mesne, and tenant,
 and the tenant holdeth of the Mesne by fealty
 and 1. s. rent, and the mesne taketh a wife, &
 the tenant bringeth a writ of Mesne against
 the Mesne, and fore-judgeth him, & the mesne
 the wife of the Mesne shall have dower
 of the rent by which the tenant held, and shall
 be attendant unto the tenant, causa parer.

44. And if Lord and Tenant are by fealty
 and 1. pence and the tenant giveth the tenan-
 cy in taile, reserving twelve pence, and the
 Lord taketh a wife, and hath issue, and dis-
 continueth the land in tail in fee, & dieth, and
 the wife bringeth a writ of dower against the
 Lord, and recovereth, and hath executi-
 on, she shall not be attendant for any rent unto
 the

the Discontinuer, for she is not chargeable in the same course her husband was, for she doth not cannot abate upon her for the rent reserved, &c. But he may abate for the same upon the issue in tail notwithstanding the discontinuance, and yet the wife shall not be attendant unto the issue in tail, until he hath recovered the estate tain, &c. *tenen quare.*

234 Lord and Tenant are by fealty and a horse price forty shillings, and the tenant taketh a wife, and dieth, and his heir comes into the tenancy, and endoweth the wife with the third part thereof; she shall be attendant unto the heir for thirteen shillings four pence. But if the tenant had been by fealty and a horse to be rendered yearly, &c. without limiting or making mention of what value the horse should be, &c. in that case the wife shall be attendant unto the heir in rendering unto him every third year a horse, &c. The same law is of other things entire, *Mutat. s. mutandis*, if not that it be in special cases.

4.5 And as to dower by the custome, sufficient thereof hath been shewed by Mr. Littleton in his Chapter of Dower, and in Natura Brevium with the additions upon the Customs of Dower. But it is to know, If the custome be that a woman shall have for her dower the moiety of lands and tenements which her husband holden in Socage within a certain precinct, &c. If the husband have a Bailiwick, &c. or a Fair, &c. in fee during the coverture within the same precinct, the wife shall not have dower, because it is no Tenement, &c. And a custome shall be taken strictly.

436 But if the husband hath a Baillywick, 11 E. 3.
 or Fair, &c. as appendant unto his Ma- Dow. 85:
 nor within the same precinct of which Manor
 the husband was seised in fee during the co-
 verture, and held the same in Socage now
 if the wife be endowed of the moitie of the
 Manor by the custom, she shall have the profit
 of the moitie of the Baillywick, or of the Fair
 as appendant unto the moitie of the Manor:
 But Quere, if the Baillywick or Fair be dis-
 appendant in fee from the Manor, after the
 death of the husband, and before the endow-
 ment, whether she shall then have the profit of
 the Baillywick or Fair, &c. But it seemeth
 she shall have the same because she shall be en-
 dowed of the best possession which her husband
 had during the coverture or marriage, &c.

437 Of Dower ad ostium Ecclesie, a good
 Declaration hath been made by Mr. Littleton,
 in his first Book, in the Chapter of Dower,
 and in Natura Brevium, with the Additions:
 and it is said that such endowment is good
 without deed, as well of lands lying in ano-
 ther County, as of lands lying in the Coun-
 ty where the marriage is solemnized, because
 such endowment ought to be made after the
 contract made at the Church doore, if it be the
 custom so to do, for then they are husband and
 wife, and the husband cannot make a deed un-
 to his wife, nor cannot make liberty of seisin
 unto his wife to make her to be in the land by
 the same husband. And because it is not re-
 quiste that the lands be with the view &c.

438 If an Infant at the age of eight years,
 endow his wife ad ostium Ecclesie without
 deed, such endowment is void, notwithstanding

ing that he assent and agree unto the marriage, after his age of fourteen years, for a thing cannot be made good. For notwithstanding that the marriage was good and effectual until disagreement, yet such endowment made by him at such age, whereby his inheritance shall be bounden, is not good, &c.

439 And such endowment made De Capitali Baronia, tenet de Rege in Capite, or De Capitali Messuagi feodi militis is not good. And it hath ben holden, that if a man assigne unto his wife when he espouses her, at the Church door, &c. the moitie of all his lands and tenements which shall come unto him in fee, during the coverture, and afterwards during the coverture, he purchaseth lands or tenements in fee, and dieth, That the wife shall have the moitie of those lands by force during the assignment, &c. tamen quære.

440 The same law is, If a man endow his wife, ad ostium Ecclesie, of such lands which his Mother holdeth in dower, the reversion to him in fee, upon condition, that if his mother dieth, during the marriage betwixt them, that then his wife shall have all the lands for her dower, and after his mother dieth during the marriage betwixt them, &c.

441 And as unto Dower, ex assensu patris, it hath been spoken of by Mr. Littleton in his first Book of the Chapter of Dower, and in Natura Brevium, with the Addition upon the Writs of Dower. And it is to knowe That so and in the same mannes as there is dower ex assensu patris, in the same manner and forme there is dower ex assensu matris, mutatis mutandis.

442 But there is no dower, ex assensu fra- M. 20 E. 3.
 tris nec consanguinei, and the wife ought to Dow. 134.
 have a dower of the father or mother, proving his M. 40 E. 3.
 assent & consent, for his free-hold shall be 41.
 bounden thereby, and livery and seisin shall
 not be made thereof: And the Father may
 well make such a dower unto his sons wife, &c.
 And yet in ancient Books, such assent and
 consent hath been tryed by proofs, but the law
 is contrary at this day. And such endowment
 ought to be made immediately after affiance
 made betwixt them at the Church door, or in
 the Church if the marriages are used to be in
 the Church, &c.

443 And yet it hath been holden in ancient
 Books, That where the son is heir apparent
 unto his father (and so he ought to be for such
 endowment made unto the wife of the second
 son is nothing worth) if he marieth against
 his fathers will, and afterwards within eight
 months after the marriage, the same son en-
 dow his wife with the assent of his father of
 the lands and tenements he hath, &c. It
 was holden that the same was good endow-
 ment, &c.

444 And it is to know, that where the en-
 dowment ex assensu patris, vel matris, is good
 and sufficient in Law, the wife of the son im-
 mediately after the death of her husband, in
 the life of the husbands father, may enter into
 the same lands so assigned unto her in dower,

445 And know, That if there be father and
 son, and the father is seised of land in fee, and
 taketh the same land unto a stranger for life,
 and afterwards the son taketh a wife, and en-

doweth her, ex assensu patris, of the reversion of the same land, and after the Lesser dieth, and the father entreteth into the land sei'ed, and the son dieth: The sons wife shall not have dower by force of this assignment, because that at the time of the assignment and assent, the land was not dowable of the reversion by the Common Law, notwithstanding that the reversion had been in the possession of her husband, and notwithstanding that the freehold and the fee are in the father of the husband, simul & semel, during the life of her husband, this matter shall not help the wife, for the title of the wife by force of such endowment did not begin after such endowment and assent of the father, &c. nor before such endowment and such assent, but took all its effect onely at the same time.

446 The same law is, if the son endoweth his wife with the assent of the father, of lands of the father which he held jointly in fee with a stranger at the time of his assent, &c. So shall it be if such endowment be made of lands or tenements which the father holdeth for the term of his life, at the time of such endowment,

447 But if the father had been seised in fee of such lands, whereof such endowment is made at the time of his assent, &c. he shall be bounden thereby, during his life: But the issue in tail shall not be bounden thereby, nor a woman who hath title to have dower of the land before the assent, &c. As the father's issue which he had at the time of the assent, nor a stranger who have ancienter title to the land, &c. shall be bounden by such endowment or assent, &c.

And it hath been holden, If there be father and son, and the father is seised of land in fee with his wife, in the right of his wife, and the sonne endoweth his wife of the same land with the assent of the father, and the son forbidding his father, that the sons wife shall not have dower of this land against the father, because the father may make feoffment of the same land, during the coverture between him and his wife, and it shall be good against him; and it hath been said that it is, because that in such case the husband doth presently discontinue himselfe of the possession, but in the other case he remaineth seised of the same land during the coverture, and in the right of his wife, and when this matter doth appaer unto the Court. The Court who is a third person shall barre the sons wife of her dower, because otherwise the Court should do wrong unto the wife of the father, *tamen quare*, for that the father cannot plead such matter; but if it be in a case in which receit lyeth, if the wife be received upon the default of her husband, she may plead this matter, &c. Yet notwithstanding that she is received, it seemeth, That upon the matter of Law, the Sons wife shall have the dower which was assigned unto her by her husband with the assent of his father, &c.

For if a man be seised of land in fee in the right of his wife, and he & his wife grant a mortgage out of the same land unto a stranger in fee, and the Grantee is seised thereof, and afterwards he distraineth for the rent, and Rescous is made by the Grantor, and he payeth an assise of the same rent, &c. and the assise of the Grantor be received, notwithstanding,

standing that she hath nothing in the rent, upon the default of her husband, and pleads the special matter; yet notwithstanding the Plaintiff shall have judgement to recover, &c. And yet in the same case the husband continueth possession in the land, out of which the rent was issuing, in the right of his wife, &c. But notwithstanding that, the grant is good at the least during the coverture betwixt the husband and his wife, &c.

450 Dowment of the most fair part is in such manner and forme, as Master Littleton hath shewed in his first book in the Chapter of Dower: And it is to know, that if in such case the lands which the woman hath as Guardian in Socage, be not of value to make such endowment, or if a rent-charge be issuing out of the same land, which rent had begunning before the woman had title to the dower, &c. and by reason of which rent or of the lands which she hath as Guardian in Socage be not of sufficient value to make such endowment; then the woman by way of reparation may shew this matter against the Guardian by Knights service, &c. And if she do so, and the Guardian by Knights service cannot deny it, &c. or traverseth the same, which by verdict is found for the woman; then the woman shall recover so much of the lands holden in Knights service, as shall amount with the lands holden in Socage unto the value of the third part of the lands holden in Knights service and in Socage, if the case require, &c.

451 But if all the lands which the husband had were holden in socage, &c. and his wife

her as Guardian in Socage; she shall be allowed of the third part of the profits upon her account, in allowance of her dower in the meane-time; But in such case shee shall not endow her selfe of the third part of the lands or Tenements, to hold as her Freehold, &c.

452 And if in the same case the woman Guardian in socage bring a Writ of Dower against the heir, it is no plea for the heir to say, that he is Guardian in socage, and may endow her selfe, &c.

453 And if a woman guardian in socage, bring a writ of Dower against the Feoffee of the husband with warrantie, the Feoffee cannot shew the special matter, and pray that the Court would award, that she may endow her selfe of the fairest part, &c. because that the Feoffee may vouch the heir. But the Guardian in Knights service may so do, &c.

454 And it is no good plea for the Guardian in Knights service to say, that the woman who is Demandant in the Writ of Dower, was seised of certain lands and tenements as Guardian in socage; and pray the Court that she may endow her selfe of the most faire part thereof, &c. *Causa pater*, But *Quare*, if he say, that the woman was seised of lands and tenements, &c. as Guardian in socage at the day of the purchase of the writ; it seemeth the same is a good plea, if the lands and tenements be not debested out of her possession by rightful title, and if it were so, yet the plea is good until this matter be shewed by the woman by way of replication, &c.

455 If a woman Guardian indeed
 in knights service of lands & tenements
 were her husbands, to which bying a
 Dower against another Guardian in knights
 service, of lands and tenements which were
 her husbands, it is no plea for her to shew the
 special matter, and pray that it be awarded
 by the Court, that she may endow her selfe, of
 the most faire part, &c. because that she being
 Guardian in knights service, took the issues,
 profits, and revenues of her same lands unto
 her own use, &c.

CHAP.

CHAP. VI.

Tenant by the Courtesie.

456 **A**fter Littleton in his first book in the Chapter of Tenant by the Curtesie, hath well declared of Tenant by the Curtesie, and hath also put a good maxime in Law concerning Tenant by the Curtesie in his Chapter of Dowry, &c.

457 And it is to know, That a man shall not be Tenant by the Curtesie or right onely, &c. nor of estates in suspence, if not that it be in special cases, &c. A man shall not be Tenant by the Curtesie, &c. of an use of lands or tenements, &c. A man shall not be Tenant by the Curtesie of a possession in Law, &c.

458 And therefore, if a single woman seised in fee of lands or tenements be disseised, and taketh a husband, and they have issue, and the wife dieth before any re-entry made, &c. the husband cannot enter the lands and tenements, and have them as tenant by the curtesie, because there was but a right of entry or action,

action, &c. to him and his wife, during the coverture, as in the right of his wife: But if the wife during the coverture had entered into the same lands and tenements, her husband knowing thereof, and the Disseisor entered during the coverture, and the wife dieth, the husband knowing of the entry of the wife, may enter and ouste the Disseisor of the lands and tenements, and have and hold the same during the term of his life, as Tenant by the Curtesie, &c.

459 If a woman be seignoresse, and a man be tenant, and they enter-marry, and have issue, and the wife dieth, the husband shall be tenant by the curtesie of the Seignorie, because the Seignorie was in suspence.

460 But if a single woman hath common or rent in fee issuing out of land, &c. And the tenant leaseth the same land unto a stranger for the terme of another mans life, and the woman marieth with the Lessee, for the terme of another mans life, and afterwards the wife dieth, the husband shall be tenant by the curtesie of the common, &c. The same shall be if a woman hath House-boot and the boot appendant unto her inheritance, *mutandis*, &c.

461 If a single woman hath a rent-charge in fee issuing out of land, and the tenant leaseth the Land unto I. S. for twenty years, and the woman marieth with the Lessee, and they have issue, and the wife dieth within the Terme, Quære, if the husband shall be tenant by the Curtesie of the rent after the terme terminated, &c.

462 If there be a woman Seignoresse, and

tenant

and the tenant doth enfeof a stranger of the tenancy upon condition, and the woman Seignoresse marrieth with the Feoffee, and they have issue, and the condition broken, and the wife dieth, and the Feoffee entreteth upon the Feoffee, and putteth him in of the tenancy for the condition broken (during the coverture) yet the Feoffee shall be Tenant by the Curtesie of the Seignoresse, &c.

43 If a single woman seised of land in fee enfeofeth thereof a stranger unto the use of a woman and her heirs, and afterwards she taketh husband, and they have issue, and the wife dieth before any estate of inheritance entered in the wife, during the coverture of the land which was in use, the husband shall not be Tenant by the Curtesie of the wife, &c. And so shall it be of an use of other things inheritable, Mutatis mutandis,

44 And if there be father and daughter, the father is seised in fee of lands and tenements, and the daughter taketh husband, and they have issue, and the father dieth seised in fee of the same lands and tenements, and the daughter dieth before any entry made by her, or by her husband, or by any other person or persons for them, the husband shall be Tenant by the Curtesie of the said father and tenements, because there was but one seision in law of the lands and tenements in his wife during the coverture, the law is in all like case, &c.

45 And it is to know, That if before the

the Statute of Westm. 2. De donis conditionibus, cap. 1. Lands have been given unto the husband and his wife, and unto the heirs of their two bodies begotten, and the husband dieth: and she being seised of such estate in the same lands and tenements, taketh another husband, and they have issue, and the wife dieth, the second husband shall be Tenant by the Curtesie of the same lands, &c. notwithstanding that the wife dieth after the said Statute made, and the same appeareth by the word of the Statute, which are, Nec secundum vir, &c.

466 And it is to know, That if a single woman seised of lands in fee taketh a husband and hath issue, and the husband dieth; and she being so seised, &c. taketh another husband and hath issue by him, and the wife dieth leaving the first issue, yet the second husband shall be tenant by the curtesie, &c.

467 If a single woman seised of land in fee leaseeth the same unto l. s. for term of life, and after she marieth with T. D. and they have issue, and the wife dieth leaving the Lessee for life: the husband shall not be tenant by the curtesie of this reversion: But quare, if the wife hath reserved a rent, &c. unto her and her heirs upon the lease, whether the husband shall have the rent as tenant by the curtesie, or not. And if the Lessee for life dieth, leaving the husband, he may enter into the land, and have the same for the term of his life, as tenant by the curtesie, &c.

468 If there be father and daughter, and the father is seised of an Advowson in gross in fee, the daughter taketh a husband, and

father dieth, so as the Adobolson descendeth
to the daughter, and the daughter hath issue
by her husband, and dieth, before that the Ad-
bolson doth become void, yet the husband
shall be tenant by the curtesie; and notwith-
standing that the Adbolson doth become void
during the coverture, and the wife dieth after
the six moneths past, and before any present-
ment made by the husband, &c. So as the Pri-
mary doth present for lapse unto this avoid-
ance, yet the husband shall present unto the
next avoidance, as tenant by the curtesie, &c.

469 If a rent do descend in fee unto a mar-
ried woman, and she dieth before any day of
payment, yet the husband shall be tenant by
the curtesie of the rent, notwithstanding that
there was not any seisin of the same rent, du-
ring the coverture betwixt them, and notwith-
standing that the day of payment of the rent
accrued in the life of the wife, and the wife
dieth before any demand of the rent made by
the husband, yet the husband shall be Tenant
by the Curtesie, &c.

470 But if possession in law of lands or te-
nements in fee descend unto a married wo-
man, which lands are in the County of York,
and the husband and his wife are dwelling in
the County of Essex, and the wife dieth with-
in one day after the descent, so as the husband
did not enter during the coverture, for the
space of the time, yet he shall not be Te-
nant by the Curtesie, &c. And yet according
to common pretence there is no default in the
husband. But it may be said, that the husband
of the woman before the death of the Ancestor
of the woman might have spoken unto a man
dwelling

dwelling near unto the place where the
lay to enter for the woman, as in her
immediately after the death of her Husband
&c.

471 And it is to know, That if the
which the Husband hath by his wife be be-
alibe, notwithstanding it die before it be be-
cry, and before it be baptized, if there be no la-
ches in the Husband of the baptism by reason
of any contempt, &c. the Husband shall be te-
nant by the curtesie; but if such laches throu-
contempt be in the Husband, some say the
Husband shall not be Tenant by the curtesie
&c.

472 If a man seised of lands in fee as in the
right of his wife, be disseised thereof before he
hath issue, and afterwards he hath issue, and
the wife dieth before any re-entry made, he
may re-enter and have the land as Te-
nant by the curtesie, &c.

473 And if there be Husband and wife, and
they have issue, and the issue dieth, and after-
wards lands in Fee-simple descend unto the
wife, and the Husband entreats, and the wife
dieth, he shall be tenant by the curtesie, &c.

474 If the Husband before issue had, and
make a Feoffment upon condition on the part
of the Feoffee of land which he holdeth in fee in
the right of his wife, and afterwards he hath
issue by his wife, and the condition is broken,
and the wife dieth, now the husband may re-
enter for the condition broken, and when he
hath re-entered, he shall hold the same land as
tenant by the curtesie, tamen quare, &c. For
the law is contrary, if the feoffment had been
made by the Husband being within age, &c.
mutatis mutandis, &c.

And if the husband and wife are seised
in fee as in the right of the wife, and
the land is recovered against them by false
suitor, and after execution sued thereof,
they have issue, and the wife dieth, now the
husband shall have attaint: and when he
is re-continued the land, and avoided the re-
covery by attaint, he shall hold the same
land as tenant by the Curtesie; the same
law is, of a recovery had against the hus-
band and wife by erroneous processe, mutatis
mutandis, &c.

○ CHAP.

CHAP. VII.

Testaments.

476



Now we are to speak of Testaments. And it is to knowe all manner of Testaments, either Testaments written, Testaments nuncupative. And a testament nuncupative is, when as the Testator maketh his Will by words, before witnesses. More properly it is said, a Testament nuncupative, when the Testator lieth languishing for feare of sudden death, dareth not to lay writing of his Testament: And therefore he prayeth his Curate, and others his neighbours to beare witness of his last will, declareth by word what his last Will is. Such Will is as strong as a Testament written in writing, and sealed with the Seale of the Testator, if not, that it be in special Case.

477 And notwithstanding, that a Testament in writing be not sealed with the Seale of the Testator, yet it is good: But only if it be good to make freehold or inheritance to passe.

If a man make a testament, or will, afterwards he maketh another will by deed, and the latter will be proved before the ordinary, and by him put in writing, and sealed with his seal, such later will shall abrogate the former will, if not, that it be in special cases. And so alwayes the latter will and testament shall abrogate the former will and testament.

479 And if a man of unsound memory 41 Aff. p.
make two wills, that is to say, one Testa- 36.
ment in the sixth yeare of our Lord the King M. 44 E. 3:
that now is, and another Testament in the 33.
seventh year of the same King, and after the
testator sick on his death-bed, & being dumb,
a man in the presence of his neighbours
delivereth both the testaments unto the Testa-
ment, and he taketh them in his hand; And one
of the neighbours telleth him that he deliver
unto them the Testament, which he will
shall stand, and be his last will, and he
delivereth back unto them the testament with
the former date, and keepeth the other testa-
ment by him; now the testament which is de-
livered shall stand, notwithstanding that it
is of the former date, and was written before
the other testament, &c.

480 And notwithstanding that the last T. 19 H. 8:
will shall make void the former will: 11.
if a man be seised of land in fee, and there-
after entreat a stranger, and declare his will
of liberty of seisin made unto the stranger,
the seoffee shall be seised unto the use of the
feoffee for term of his life, the remainder un-
der the fee. Now he cannot alter this will

by a later will in prejudice of his th
mainder, because that the use is in him
remainder presently, so as he may sell
same. But if in the same case the remain
of the use had by me unto the right heirs
Feoffor, then the Feoffor might alter this
by a later will. And if the Feoffor had be
red his will upon the liberty of himself, that
Feoffor shall be settled unto the use of
life, the remainder unto the use of the Fe
for life, or in tail, the remainder unto
of a stranger in fee, in that case the Fe
cannot alter the will by his later will.

H. 13 H. 6. 481 If a man seised of land in fee th
to subp- do then seoff a stranger unto the intent to
na 23. foyn his will, and afterwards the Feoffor
maketh his will, and deviseth the same
unto a stranger in fee. In this case the Fe
for may alter this will by a later will,
cause that in this case, the Debitor shall
have the the land but by force of the will,
that cannot take effect but after the death
Debitor. The same laws of land, tenement
Rent, Common, &c. devisable by custom
in some places, &c. And also the same laws
of other Chattels reals and personals
Mutatis mutandis, &c.

T. 7 H. 4. 482 And it is to know, that Executors
18. not have an action as Executors before
M. 18 E. 2. testament be proved, and therefore if the will
seoffments the probate of the testament be ancient
110. the date of the making thereof, the will
abate, &c.

483 And if the Executors nor any
will prove the will, And a devise of a
real or personal is by the will, it seemeth

will have no remedy to come to the thing
 done, rather than, if he shall have remedy
 against the Administrator, or Administrators;
 there be any; and if there be no Admini-
 strator, or Administrators, if he shall have remedy against
 the Ordinary, &c. But this remedy against
 the Ordinary seemeth to be but little: for if he
 shall have any remedy, it ought to be by suit,
 in the spiritual Court; more shall be said of
 this matter after, &c. And for as much as it is necessary to
 prove the Testament, something shall
 be said concerning that, viz. What persons
 the Testament ought to be proved, and before
 what persons it ought to be proved, &c. And it
 is known, that always the Testament ought
 to be proved by the Executors, or one of them
 after death. And if there be three Executors, and
 one of them will not prove the will, nor med-
 dle with the goods of the deceased, and the o-
 ther Executor prove the will notwithstanding
 the refusal made by the other two who
 are made Executors, and notwithstanding
 the will may be proved by the third Execu-
 tor, yet the other two Executors and
 either of them may intermeddle with the goods
 of the Testator, and administer them at what
 time they will; because that when the
 will is proved, they cannot be put out of the
 will, and the said will giveth them title
 to administer the goods of the Testator, as
 well as it giveth title unto him who pro-
 veth the will, to so much as that notwith-
 standing that they never administer, and he
 proveth the said will by an action a:
 Executor

Executor of the same will, It behooves
to bring the action in all their three names.
But they shall not be charged as executors
fore they administer,

486 And it is to know, that Testaments
ought to be proved before the Ordinary, &
that it be in special places, where Lords
the probate of the testaments of their tenants
before their Stewards, or before themselves
in their temporal Courts. And the reason
why spiritual men have the proving of tes-
taments is, because it is so intended; &
the spiritual men have better consciences
lay-men, and that they have more know-
what thing is more for the profit, and
of the soule of the testator, then lay-men.
And that they will look more then Laymen
that the debts of the deceased be paid and
satisfied out of his goods, and that they will
will performed so far as his goods will
tend, &c.

487 But if the goods of the deceased
not extend to satisfy his Debts, it shall
well done if the officers of the Ordinary
nothing for the pressing of the goods, nor
the probate of the will, nor for repairs
thereof, nor for any other thing concerning
will. For if they take their fees, by
meanes, the debts of the deceased may
satisfied and paid.

488 And notwithstanding, that a man
debite a Chattel real or personal by his
yet the executors are bound by Law to pay
debts of the deceased, before they pay
for any Legacies. And therefore the
mon Law is, that the Debtors of Ch

personal cannot enter upon the Lea-
 nor take them without the assign-
 ments of the Executors, or by their
 without the assignment, or delibe-
 rant of one of them, and the reason is,
 the soul of the Testator shall not be
 longer for the non payment of his debts, &c.
 And it is to know, That wills proved
 by the Bishop himselfe of the Diocese,
 the party testis good, if he have not
 the seals of the value of 40 shillings
 other Diocese; so if he have given and
 the value of forty shillings in two
 Dioceses, then it ought to be proved
 by the Reverend Father in God, Thomas
 Cardinal Legat a latere, Archbishop of, &c.
 and Chancellor of England, or by his
 or before the reverend Father in God,
 Archbishop of, or by his officers, or before
 or their Officers.
 A Testament proved before the Com-
 of the Bishop is sufficient, &c. And
 ment proved before the Sequester or
 or Deacon of such a place, and his seal
 is sufficient for all testaments
 proved before the Ordinary himselfe,
 the probate of the will doth be-
 long to him to whom the sequestration doth
 belong.
 A Testament proved before any Officer
 or Officer deputed to the same is suffi-
 due likewise when the Kings Court
 unto the Officer spiritual by the
 write unto him who is immediate of-
 and the Court, which is the Bishop

1 H. 6. 1.

11 H. 3. 81.

7 E. 4. 14.

3 E. 3. 11.

5.

184.
T. 37 H. 6.
28.

And sometimes the party shall be
advised to shew, how the Arch-Deacon
such other Officer hath power to commit
administration: for to commit administration:
therefore it is an Action of Debt brought
against Administrators: the Plaintiff
claims how that the Bishop of Winchester
committed administration unto them: as
the Defendant pleads that the Testator
intestate at D. &c. and how that the
right of the Arch-Deacon of the same
did commit administration unto them
out that, that the Bishop did commit
administration unto them. The De-
fendants ought to shew, how the Arch-
Deacon hath power to commit administration
as by prescription, or by composition
otherwise.

And it is to know, That a Testa-
ment proved is of so much force, that
shall not have a direct traverse thereunto,
and the letters of administration: But
Defendants may say against the Testa-
ment, that the Testator made not the Plaintiff
Executor: &c. And some have said,
because the will ought to agree with the
Testament, that the Testament is true
but that is false, for a Sine Facie re-
cution ought to agree with the will
and in the manner &c. But the law is
traverseable directly, &c. And the
why the Testament is not traverseable
because that then it shall be traversed
Certificate of the Ordinary, and do
not certify contrary to that which is
ad unto the Court under his Seal.

18 E. 3.
Test. 6.

T. 18. 6. 2.
Test. 6.

Seal of the Officer deputed for the

If a Testament bears date in Cane in
Normandy, and be proved in England, it is
sufficient for the Executor to bring an action
thereupon. But if an Obligation be dated
in Cane in Normandy, the Obligee, nor
the Executor shall not have any action upon the
same, &c.

M. 2 E. 2.
Oblig. 15.



CHAP.

CHAP. VIII.

Devises.

495



Now is to speak of Devises. And first, is to shew what persons may make Devises, and then unto what person a Devise may be made, then what things may be devised, and when no estate is limited in the devise of land, tenement, or rent, &c. what estate the Devisee shall have, and when the devise shall be determined as to him in the remainder, by the act of him who hath, or shall have the particular estate of the thing devised by the devise upon which particular estate the remainder is dependant; and then how the Devisees shall come unto the things devised, &c.

496. And it is to know, That all persons who may make testaments or wills, may make a devise of the same thing, of which they may make a testament and will, and not of other things, if not that it be in special cases: therefore if a Parson of a Church be seised of lands in fee in his own right, and doth convey a stranger of the same Land unto the use of him and his heirs. Now he, viz. the stranger

cannot make a testament, and devise of this
 sort of his proper goods and Chattels:
 nor he cannot make a testament nor devise of
 any of his Glebe lands or tenements, or of
 any things which he hath in the right of his
 Church, &c.

¶ In Abbot or Prior of a Monastery can, M. 19 h. C.
 make a devise of lands nor of tenements 44.

of a leasehold, nor of an use of lands, tenements,
 or of goods, nor Chattels, &c. But if
 an Abbot or Prior be created a Bishop, and by
 the same bulls of his creation, our holy Father
 the Pope hath dispensed with him, and hath
 granted unto him to hold his Abbey, and also
 his Bishoprick: If such Bishop and Abbot
 purchase the lands devisables in fee, he may
 make a will and devise of them, and if he pur-
 chase lands not devisables in fee, & thereof
 make a stranger to his use; he may make
 a will and devise of this use, &c. And of all
 his proper goods and chattels, he may make
 a will and Devise: But he cannot make
 devise of Lands or Tenements devisables
 which he holdeth in the right of his Bisho-
 pock, or in the right of his Abbey. Nor of a
 leasehold Lands or Tenements which he holdeth
 in the right of his Bishoprick, or in the right
 of his Abbey, nor of Goods and Chattels
 which he hath in their rights, &c. Could pa-

¶ And a Deane, or Master of an Hospi-
 tal, or Guardian of a house, &c. cannot make a
 testament, nor a devise of Lands or tenements,
 or of an use of lands or tenements, &c.
 or of goods and Chattels which they have,
 in the right of their Church or House.

The

The same Law is of *Devisis* and *Commissis*, *Mutatis mutandis*, &c.

But therefore if a *Deane* and *Chapter*, or, *St. Robert* debt, or *annuity*, or anything in a *Court of Record*, as in the *Church* or *house*, &c. and *death* in *Execution* sued, &c. his *successor* may have *several* ways to execute the same *judgement*. But if they have *lands* and *tenements* *ables*, &c. or an *use* of *lands* or *tenements*, *goods* or *chattels* in their own right, they may make a *will*, and a *devise* of them.

§ 60 To *devise* by one *joint* tenant of *devisable*, which he *holdeth* in fee, as *jointly* with a *stranger* is not *good*; the Law is of a *use* in *jointure*, &c. *Will* *debile* both *survive* all his *companions*, in *fact* *debile* is *good*, as is *showed* by *election* in his *third* book in the *chapter* of *tenants*; and in *Natura* *Brovium*, *with* *devotion* upon the *will* of the *gravi* *quoniam* where are put *many* *good* *rules* *concerning* *debiles*.

§ 61 If a *woman* maketh a *will* of *her* *husband*, and *death*, and *her* *property* the *will*, and after the *probation* *will* the *husband* both *deliver* the *will* and the *Execution*, now he hath a *good* *will*, notwithstanding that he *pay* unto the *making* thereof; a *very* *reasonable* *argument* may be made why it *not* be *good*, by this *delivery* of the *will* by the *husband*, &c. For in so *much* *will* has *not* *leave* of *her* *husband* *will*, it is *void*, &c. But is *cannot* be *void*, for that it is *proven*. And *and*

26 E. 3. 71.
M. 2 E. 2.
Devise 14.

that by the delivery of the goods
to his husband with the Executors of the wife
according to the will, that he did at the first
making of the will, and such
assent is sufficient by word, &c.

And a married woman may make a
will of goods which she hath as Executrix un-
der another man without the leave of her hus-
band, as it appeareth in the Chapter of grants.

12 H. 7. 14.
per sineux.

A Monk who is Executor by the leave of
the Sovereign, may make a will of the goods
which he hath as Executor, &c. and divers o-
ther persons may make wills, as more fully
appeareth in the Chapter of Grants; Marriages,
&c.

And an Infant of the age of four years
may make a will, and it shall be good for all
goods and chattels, because of such things
Executors are accountable before the spi-
ritual Judge, or the Ordinary, so as it can-
not be intended but that they shall be expended
to the benefit, and profit of the soule of the
deceased.

But of free-hold inheritance debita-
ment, or of an use of free-hold or inheritance, a
will made by an Infant is not good, because
they are at the Common Law, for the ex-
ecutors are not to intermeddle therewith, and
they cannot demand account of them.

But if there be a Custome, that all lands
tenements within such a precinct, &c. are

M. 37 H. 6.
5.

to be devised by all manner of persons, which are
of the age of fifteen years, or above such age.

And if a will be made of lands or tenements by one of
the age of fourteen years, or above such age, it is good.
But if a man seised of such
lands and tenements by feoffment, and thereof both
enfeoff

thence a stranger unto his use, and his life, and dieth; and his heire being of the age of 15 years, taketh his will, and deviseth the same land given in use to him unto a stranger in fee, and dieth, this devise is not good.

105. Now it is to shew, to what persons a devise may be made. And as to that, know that a devise may be made unto all such persons unto whom a grant may be made, *in rebus*, if not, that it be in special cases. And it is to know, that the devise must be good, and take effect at the time of the death of the Devisor, if not in special cases, otherwise it shall not be good. As put case, a man seised of land devisable, deviseth the same lands unto the Priests of a College, or Chantry, and there is not any such College, or Chantry at the time of the death of the Devisor; and afterwards such a College, or Chantry is made, yet the devise is void.

9 H. 6. 23. Cause the devises are purchases, and when a man taketh lands or tenements by purchase, he ought to be of ability to take the same, and it falleth unto him by the purchase, or otherwise he shall not have the same, &c. as appeareth in the Chapter of grants, &c.

106. If a man seised of land devisable, deviseth the same land unto his wife for terme of her life, the remainder unto his sonne, and unto the heirs males of his body begotten, and for default of such issue, the remainder unto the next heir male of his body, and unto his heirs males of his body begotten, and dieth; and his wife entereth in force of the devise. And afterwards

with his bone issue male of his body, if the wife, being tenant for terme of her life, and afterwards she dieth, and one B. D. his wife enter into the same land as in right of A. his wife, as cousin and heire to B. D. and have issue a sonne, and the husband and wife by deed enrolled enfeof a stranger of the same land in fee, and the said son as next heire male entereth into the land, his entry is not lawful, Causa patet,

And it is to know, that a man may devise by his will, that his executor, or the executors of his executor, may sell his lands, &c. the same is good, yet the executors of his executor were not known at the time of the death of the Devisor, but shall be in esse, and known at the time of the death of the executors of the Devisor; See others cases concerning executors in the Chapter of Grants, Muramandi, &c.

And if a man seised of Land devisable, hath two sons and one daughter, which daughter hath issue two daughters, & deviseth the land unto a stranger for life, & remainder to his two sons for life, the remainder unto the first of the blood of his child, the deviser dieth, and the mother of the two daughters dieth, the stranger dieth, the eldest son dieth without issue, & second son doth thereof enfeof a stranger with warranty, upon whom the two daughters enter, and the Feoffor putteth them out, they bring an Assise, the Assise will well. And it is to know, that if a man be seised of land devisable in fee, he may devise the same land unto his executor for years, for life, in fee, or in fee, &c.

21 H. 2.
Divise 27.

1509. If a man seised of land devisable
devise the same unto B. S. for life, the re-
mainer Ecclesia & Andrea in Holborn, &c.
Devisable with, it seemeth the remainder
good by way of devise, but otherwys
it be by way of grant, as it appeareth in
Chapter of grants.

1510. But the communalty of a company
is not incorporated by Kings charter in
chase, &c. cannot take by a devise. And
foze if a man seised of land devisable in
deviseth the same land unto A. for life to
a Chaplain to sing for his soul in the
of, &c. the remainder unto the brother
the Whittawrs in London, to have a Chap-
er, &c. Now if the, viz. the Whittawrs be
incorporated by the Kings Charter, and
for to purchase, the remainder is void
know. That the chief and supream
of the fraternity, corporation, or guild
taken in Law for the best men of the frater-
ty, corporation, or guild, &c. See also
concerning this matter in the Chap-
ter of Grants, Mutatis mutandis, &c.

40 E. 3.
Ass. p. 2.

1511. Now is to shew what things
devisable. And as to that, know, that all
kind of Chattels reals and personals, move-
able, and free-hold, or inheritance, or
tenements, &c. devisable, or in use,
devisable, if not by it be in special cases.
As to Chattels reals and personals, it is to
know, that all such Chattels reals and per-
sonals, which the Executors shall have may be
seised not, that it be in special cases, &c.
1512. And therefore, if a man be seised
of land in fee, or in fee-tail, and some the

and deviseth the Corne growing upon
at the time of his death unto a stran-
is a good devise, notwithstanding that
land is not devisable nor in use, &c. But
Devisor had devised the trees growing
the land at the time of his death the devise
unto the trees is void, because that the heir
Devisor shall have them, and not the ex-
&c.

If a man seised of land in fee as in the
of his wife, leaseth the same land for
unto a stranger, and the Lessor somethy
land, and afterwards the wife dieth, the
not being ripe. In this case the Lessor
while the corne growing upon the land,
his estate was certain, and is deter-
a thing uncertain was the cause of
termination of his estate, &c. See divers
concerning this matter in the first book
Lutetia, in the Chapter of Tenant
&c. Mutatis mutandis, &c.

If tenant by the Curtesie of lands or 10 E. 3. 29
Tenant for life leaseth the same
stranger for years, and the Lessor dieth
the terme of years: In this case, if the
growing upon the lands, and not
the time of the death of the Lessor, the
will devise the same, &c.

But if after the sowing, the Lessor for
unto a stranger, and before the
Lessor doth enter for a forfeiture,
the corn, &c. The same law is, H. 40 E. 3.
for years upon condition, Mutatis &c.
And if land be recovered against T. 37 H. 6.
for years into waste, he can- 35.
the corn, notwithstanding it be
growing

M. 7 H. 7.
11.

growing upon his land at the time of death, &c. And so, if land be recovered by his Heir by a more ancient title, &c. otherwise it is, if a common recovery be had against his Heir in a writ of Entry in fee, or in any other writ by a false and fraudulent title, &c.

116 If a man seised of land in fee thereof enfeoff a stranger in mortgage by payment and not payment on the part of the Heir, at a certain day, and the Heir seizes the land, and the Heir pays the money at the day appointed, and enters the Heir cannot devise the Corn growing upon the land as it is said, *ramen quare.*

P. 44 E. 3.
14.

117 If a Heir be put in execution by a private merchant, and he holds a Heir in execution both a Heir, and execution, by reason of the Heir, which is as much worth as the Heir mount unto; he whose lands are put in execution shall have a Scire facit against the Heir, &c. and shall have his Heir back. But if the Comtee hath sold the land, may well devise the Corn growing upon the land.

7 Aff. p. 10.

118 And if a man be seised of land in fee right of his wife, &c. and seizes the land, and deviseth the corn growing upon the land, &c. and dieth before the corn is taken, the Devisee shall have the corn, and the wife, but otherwise in case of grass, &c. at the time of the devisors death, &c.

37 H. 6. 5.

9 H. 7. 17.

18 H. 6. 1.

15 E. 4. 30.

119 If a Heir be of land, and seizes the land; How if the Heir be recovered by a writ of Entry in fee, or in any other writ by a false and fraudulent title, &c.

may devise the corn, and so may
the disseisor: But otherwile it should be,
if he be seised before his entry, or be-
fore recovery, notwithstanding that it re-
maineth upon the land, &c. For then the disseisor
may devise the same, &c. But the Law is o-
therwile in the same case of trees severed, which
grow upon the lands, &c.

And it is said, if tenant in tail of land
sever the same land for life, and the Lessee
of the same land, and the tenant in tail
may devise the same in tail doth recover in a
writ of right, before the corn is se-
vered, the issue in tail may well devise the
same quere.

If a man seised of land in fee hath issue
a son, and a daughter, his wife being great
with a son, and the daughter entred, 9 H. 6. 6.
sever the land, and after the sowing and
recovery, the son is borne, and entred
for him; yet the
may devise the corn growing upon
the land, &c. But if after the sowing,
before the sonne was born, the mo-
ther recovered her dower against the
land, and the land should be assigned unto
her for her dower in allowance
of the same. Now the mother may devise
the corn growing upon the land, and the
same quere.

But the Statute of Mer-
chandise, Quod omnes vidue
possint habere blada, &c. as unto this
is against the common law;
& so the Statute, &c. toucheth the land
in dower, and maketh her ex-
ecutor,

Executors, and dieth, the coine not being
the Executors shall have the coine, not-
withstanding that they are not severed by the
mon Law. And to be short, Tenant in
er may devise the Coine growing upon
land which she holdeth in dower at the
of her death, by the Common Law. As
was the Law taken in Anno. H. 3. De
which was 16 years before the making
Statute of Merton, &c.

H. 1. H. 7. 29. § 13 If two tenants in common be
in fee, and one of them taketh a wife, and
dieth, and his wife is endowed, &c. And
the other Tenant in common sell the land
and afterwards she maketh her executor,
dieth, the coine not being severed, the ex-
tors shall have the coine in common with
who held in common with the Tenant
dower.

§ 14 If the Guardian in Knights
assigne unto the mother of the ward, then
then he ought to have for her dower, as
saweth the same land, and afterwards
her executors, and dieth before the
full age, and afterwards the heir at
age doth enter upon the Coine not severed,
may put out the executors of the
dower out of the possession of the
ing upon the land, whereof she
to have dower. In the same manner
be, if the Guardian in Knights assigne
eth the mother of the ward, &c. of more
he ought to have, &c. And the heir
cometh at his full age, may sue for
of Admeasurement of dower, &c.

§ 15 And it is to know, That the

by and lands; and a lease for years of
and tenements, and a grant for years
rent, and horses, kine, sheep, &c. and gold
silver, in plate, or money, and rings, or
any such manner, and beds, and pots, and
and platters, and all manner of chattels
and personals whatsoever they be devi-
sed, the executors shall have them, if they
be devised, &c.

But where a man hath a joynt interest
in chattels, &c. at the time of his death,
if he made thereof is nothing worth, Cau-
tion. And where such chattels are annexed
to the free-hold or inheritance, so as they
cannot be severed from the same by him who
hath property in them, then a devise made by
him who hath property in them is not good.

And if a man doth give or a stranger of
his money, and not payment on the
part of the Feoffee, viz. that if the Feoffee pay
the Feoffor 20 pound at the feast of Easter,
then following, that then he shall keep
the land unto him and his heirs, & if he do not
pay, that it shall be lawful for the Fe-
offee to enter. Now if the Feoffor make his
will and devise the money when it shall be
paid, & die before the day of pay-
ment, it is a good devise conditionally, viz. if
the Feoffee pay the money unto his execu-
tors, & shall be of 20 lb. payable at the
feast of Easter, upon our Obligation, or upon
such condition as before is
mentioned, Murach mandis. And yet if he had
made the Obligation, or the counter-part of
the same, and given it into a stranger, the devisee could
not bring an Action in his own name upon

12 E. 3.
condition
8.

the obligation, but he may give, or sell obligation unto the Obligor, or unto a third person, &c. And the Debtor cannot enter the land by force of the condition, notwithstanding that the condition be broken, that he hath the indenture, Cause paid, it seemeth he may give, or sell away the indenture, &c.

528 Now to speak of Devises of hold and Inheritance. And it is to be noted that when freehold or inheritance passeth from one person unto another by devise, it behoveth that it be devisable, or capable to use; For if it be not devisable, or capable to use, the devise is void. And it is to be noted that before the Statute of West. 2. it was called and known by the name of Quia emptores terrarum, &c. There was no use of it of houses, it not, that it were capable to the delivery of the estate, &c.

529 And therefore it is before the Statute Quia emptores terrarum, if a lord of land had enfeoffed a stranger without consideration, and without expressing to him the use, yet the Feoffee should be seized to the lord's own use. For notwithstanding that consideration were expressed, &c. yet the lord's offer shall hold of the Feoffee by the Statute, as the Feoffee held of the lord, notwithstanding, if in the same case it had been expressed in the feoffment, to hold the land unto the Feoffee, and to give the profits unto the use of the Feoffor, and then the Feoffee shall be seized according to the Statute.

that land is, if any other use be expressed
in the instrument, &c.

But if a man seised of a rent-charge
before the statute of Quia emptores terra-
renteth the same rent unto a stranger
without any consideration, and without
expressing of any use, the Grantee shall be seised
unto the use of the Grantor, and his heirs,
in which case the law doth not make
any consideration.

But it is said, that if a man be seised
in fee, and grant a rent issuing out of
some land unto a stranger without any
consideration, &c. The Grantee shall be seised
of his rent unto his own use; for the law
intendeth such a grant to be made to the
use of the Grantor. And it is said by some,
that if a man hath common in gross which is
in fee, and he granteth the same com-
mon unto a stranger in fee, without any con-
sideration, &c. That the Grantee shall be seised
of the Common to his own use, because
the profit is of a Common are to be taken
in mouths of cattel, so as the profit is com-
mon, &c. But as unto that, it may be said,
that it is as great profit for the Grantee to
have his cattell, as to have the value of
the Common in rent, &c. Tancon

If there be Lord and Tenant by Ho-
mage and Fealty, and the Lord granteth his
rent unto a stranger, unto the use of the
Grantor, and his heirs, and the tenant attorns,
the homage and fealty are not valuable, and
the Grantee is seised thereof unto the use of
the Grantor, to such intent as the Grantor
may

M. 14 H. 8. may grant the seignorie unto a stranger
5. sell it, or devise it by his will, &c.

533 And if Tenant in fee-simple do at this
day infeoff a stranger thereof without any
consideration, &c. The feoffee is settled unto
the use of the feoffor and his heirs; for the
Law in this case doth not make any conside-
ration, for the feoffee shall not hold of the
feoffor, &c. but he shall hold of him of whom
his feoffor held by force of the statute of
emptores terrarum. Where shall be said of this
matter in the Chapter of Reversions.

534 And if a man at this day, or after
Stat. of West. 2. cap. 1. De donis condon-
litis, and before the statute de curia emptor-
terrarum, was, or is seized of lands in fee,
and gives the same in tail unto a stranger, with-
out any consideration, &c. the donee is set-
tled unto the use of the donor, for the Law maketh
no distinction, by the way of tenure, &c.

535 And if a man seized of Land, leases
the same without any consideration for
&c. the lessee is settled unto his own use,
yet if nothing be reserved, he shall do om-
nibus unto his lessor and his heirs, or unto
whomever of the reversion, &c.

536 And if a lease for years be made
without any consideration, the lessee is settled
to his own use. And yet according to the
opinion of divers men, a lease for years
shall not be made, &c. But the reason is, that
that the reversion of the same thing remaineth
in the lessor; so as the Law cannot think
that the intent of the lessor was, that the
lessee should be seized for his life, if he hath
made expresse mention upon the lease.

may devise his land for years; not
standing that it be not devisable; nor in
fee. And if a man at this day be seised of a
messuage, rent, or common in gosse which is
granted in fee, and grants the same unto a
stranger in tail, for life or for years without
consideration, they are seised thereof un-
der their own use; *Quia pater*. But in all the
cases of feoffments, grants, or leases, if a lease
is made in the feoffment, grant, or lease,
they, viz. the feoffees, Donors, Grantees,
Leases, shall be seised unto the use of the
feoffor, if it be not against law. As where it
is made unto the use of a Monk or priest,
it is not sovereign of the house, as it is a
void. If a devise be made of franchises or
advowsons, it is void, that the feoffor hold
the same to himself or to his heirs, otherwise
it is void. And therefore, if a man be seised of
land, rent, or common, or, &c. in fee, he may
devise the same unto a stranger
in tail, or for life, and the Devise for life
or for years is void, &c. But if a man be seised
of lands, tenements, rents, common,
or, &c. and he be seised in fee,
he may devise the same unto a stranger in fee,
unto the use of the
feoffor, or grantor, and his heirs, &c. If he, viz.
the feoffor or grantor, devise the same lands,
tenements, rent, common, or, &c. in fee, in
tail, or for life, or for the term of another mans
life, it is a good devise, &c. If husband and wife be joynt purchas-
ers

37 Aff.p.6. **37** And the husband deviseth the fee-simple unto the death of him and his wife unto a stranger by his will, &c. it is a good devise, &c.

340 If lands &c. be devised unto the husband and wife in tail, the remainder unto the right heirs of the husband, and the Deviser dies, and the husband and wife enter, &c. and the husband deviseth the fee-simple unto his wife, and dieth, it is a good devise, &c. And that the reversion of lands or tenements vendible shall passe by the name *curiam reuerentium*, &c. See when one thing shall passe by the name of another, and when one thing shall passe as parcel of another, and when other good matters concerning devises in the Chapter of grants, *Missusmurandi*, &c.

M. 34 H. 6.
Devise 4.

38 Aff.p.3.

341 But if a man seized of land in fee simple by his testament, that his executors shall sell the same land, and distribute the proceeds thereof for his soule; and the Deviser dieth; now the inheritance shall descend unto the heir, and shall continue in him, until the Executors sell, &c. and then the Executors may enter, &c. and thereof take the money according to the sale.

342 But if lands devisable are devised unto the Executors for to sell, &c. In this case the Executors after the death of the Deviser may enter into the lands, &c. because they are devised unto them.

343 But if a man tender unto them money for the lands, but not so much as the land is worth, and they refuse it, to the end that they may sell the lands dearer, and for two purposes.

the profits of the same lands unto their
heir, the heir may enter and put out the
Executors, causa patet.

But if a man be seised of lands not de-
visable, and doth thereof entfeoff a stranger
in his life, viz. unto the use of a feoffee and
heirs, and afterwards the feoffee deviseth
the same land unto his Executors for to
live and die, in this case, the Executors
may enter into the lands, and continue pos-
session thereof, because they have only a use of
the land by this devise, but they may enter,
and thereof entfeoff the Heir, &c. by force of
the Statute of 1 R. 2. cap. 2. And so may the
feoffee of land in life do, &c. And also a
grant, release, lease, and confirmation,
made by cession que vie, &c. are good and effectu-
al by force of the said Statute. For the Stat.
But a Devise made by cession que vie in
lands is void; so is a devise made by tenant in
lands devisable, &c.

If a man maketh his will, and maketh
two Executors, and willeth that his Execu-
tors shall sell his land, &c. and die, and one
of them will not intermeddle, and the other
taketh the administration upon him
and payeth the debts, &c. The sale made by
the one alone is good; and if both Executors
take upon them the administration, and one of
them will not sell, then the sale by the other
alone is good; but if one of the Exe-
cutors selleth unto one man, and the other
selleth unto another, it is said by
the Court, that the sale of him which is most ad-
ministrative for the Testator shall be good; but
they say, that the first sale shall be good, and
the

P. 46 E. 3.
Devises 8.

39 Aff. p.
Ep. 116.

the other void, whether it be or not, is good
for the Testator or not. *laco. quare.*

546 But if the Will be, that the executors
shall jointly sell, and one of them selleth unto
one man, and the other selleth unto another
man, and afterwards both the executors join
in a sale unto a third person, in this case the
last sale is good, and the other sales are
good.

547 And if a man willeth, that his lands
shall be sold for the payment of his debts, and
doth not expresse by whom the sale shall be, it
shall be sold by his executors, because the land
shall be sold for the payment of his debts, and
15 H. 7. 12. the payment of the Testator's debts, is
long unto the executors, &c. But if a man wil-
leth that his land shall be sold, and doth not
say by whom, nor for what, it is void in
both, *laco. quare*, the opinion of other
19 H. 8. 9.

548 If a man willeth, that A. and his
executors shall sell his lands, &c. and they
sell before the Ordinary, yet they may sell
because they are certainly named; so if they
15 H. 7. 12. willeth, that the will of the Testator is, that
they shall sell, whether they refuse or not, and
otherwile it shall be (as it saith) if they
leth, that his executors shall sell, without ex-
pressing their names, and they refuse before
the Ordinary, they cannot sell, &c.

549 If a man maketh T. S. his executor,
and willeth that a Monk shall sell his land,
and shall distribute the profit thereof for his
soul, the Monk is executor to his purpose.
If a man willeth that his executors shall sell
his lands, and distribute the profits coming
thereof

for his soule, and they prove the will, make their executors, and die before they sell, the executors shall sell the same: but if they make no executors, their administrators shall not sell, for want of probity, for the sale is a thing of trust, &c.

150. If a man willeth that his executors shall sell his land, if they all die, but one, be any sale made by them, he who surbibeth may sell. If a man willeth that l. his heire shall sell, &c. and l. die before the sale, his heire shall not sell the land.

151. If Cestuy que use, willeth & his feoffees shall sell his land, they ought to sell jointly in reason of their joint possession, &c. But if all the feoffees but one die before sale made by them, then he who surbibeth may sell, because the possession of the whole is in him,

152. If a man willeth that l. S. his executor shall sell his land, the executors of l. S. shall not sell the same, because it appeareth by the words of the will, that no other shall sell: and alwayes he shall sell in whom confidence and trust is reposed. And therefore if a man willeth that l. S. Mayor of London shall sell, &c. And l. S. is Mayor of London at the time, and before the sale another man is chosen Mayor, in this case l. S. shall sell, and not the new Mayor. And so is it in the like cases, &c.

153. If a man willeth that his executors and his feoffees shall sell his land; and the executors sell without the feoffees unto one man, and the feoffees without the executors sell unto another man, and afterwards the executors

cutoys and the Feoffment sell unto a third person. In this case the last sale is good, and the other two sales are not good, &c.

554 And it is to knowe, that when the land is become, so as it cannot be sold, that the wife shall have the same. As put case. A man seignior of Lands debilement, deviseth by his will, that his Land shall be sold by his Executors, and dieth; and all the Executors die intestate before any sale made by them, or any of them, in such case the wife shall have the land: And if Cestuy que use of Lands in the willeth that I. S. now his Executor shall sell, &c. And I. S. dieth before any sale made by him; then the wife is in the land to him, and his heirs for ever, &c.

555 Also to knowe, what no estate is devised in the testament or will unto the Debitor, what estate the Debitor shall have. As put case, knowe, that when no estate is devised, that the Debitor shall have all estate according to the intent of the Debitor, which intent shall be expounded by the words in the will; if not, that it be in special cases.

556 And therefore, if Cestuy que use of land or, &c. in fee, or a man seised of land in, &c. devisable in fee, deviseth the same land by his will unto I. S. Now I. S. shall have the land for his life, because that the intent of the Debitor cannot be otherwise taken by the words of the will.

M. 11 E. 3. 557 If lands be devised unto I. S. to have and to hold unto him in perpetuum. It seemeth that by these words he shall have an estate but for his life; for in perpetuum cannot extend further but unto the Debitor, and there are no more

the persons named, &c. And the life of a man in this manner is said as unto him in perpenum, &c. Tamen quare. If the words of the gift were, To hold, &c. unto the devisee, without saying any more, the Devisee hath an estate of inheritance in fee, &c. If lands be devised unto I. S. To hold unto him and his assigns, by these words, the devisee shall inherit. The same Law is, if he be devised to him and his assigns in perpenum, &c.

13. If a man hath a lease for years, and M. 34 H. 6.
 bequeathed by his will, that I. his son shall have 8.
 the lease, viz. the residue of the years unto him and his heirs, and the Devisee diech, and I.
 be the Land leased which was devised unto him by the assignment, assent, or liberty of the
 Executors (as he ought to have) and maketh
 a Devisee, and diech within the terme.
 It is said, that the heir of I. shall have the residue
 of the years, and not the Executors, because
 that the possession thereof continued in
 the Devisee was altered, and the will of the
 testator is, that his heir shall have it; and also
 because the word (Heir) in this case shall be
 taken as a name of purchase: so that it shall
 continue at the time of the death of I.
 in the Devisee, that then his heir shall
 have the residue of the Terme by way of re-
 venger by force of the Devise, &c.

14. But if a man leaseth land unto me for
 years, to have and to hold unto me and my
 assigns for years, and I make my Executors
 to be within the Terme, my Executors shall
 have the residue of the years, and not my heir.
 This is the principal case, if I.
 the man the Devisee, had granted the whole
 terme

terme unto a stranger, and afterwards die within the terme. It is said by some, that the heir shall not have any remainder. And by the like reason, they say, that the executors of I. shall have the residue of the terme, and not the heirs: But notwithstanding that the Law is so, yet that doth not prove that the heirs of I. shall not have the residue of the Terme: for it may be devised unto me and my heirs, &c. And I enter and sell the land unto a stranger, my heirs have no remedy notwithstanding the Devise, and yet if I do not sell nor alien the same, but continue the possession thereof, according unto the devise, at the time of my death, my heirs shall have it according to the devise.

7 H.6.1.

560 And if a man hath a terme for years in land or, &c. in the right of his wife, and he granteth the whole terme unto a stranger, and dieth within the terme, his wife hath no remedy to have the residue of the terme: But if the husband hath not granted the terme unto a stranger, but continueth in possession at the time of his death, and dieth within the terme, his wife shall have the residue of the years, &c.

561 If a man seised in fee of white acre and black acre devisable, and deviseth white acre unto I. S. To have and to hold to him and his heirs of his body begotten, and deviseth black acre unto T. K. to have and to hold in the same manner and form as I. S. holdeth white acre, by these words T. K. shall have an estate tail in black acre: and the reason is, because of the will, and the intent of the giver shall be observed: Of divers cases concerning this

matter

in the Chapters of grants saits, Mu-
morandis, &c.

And as it is said, the will of the Debt-
hall alwayes be obserbed, if it be not im-
possible, or much against the law, and in other
Cases, in so much, as if a man leised
land devisable, leaseth the same land unto a
stranger for life, and afterwards by his will
leaseth the reversion of the same land unto the
stranger in fee, and dieth, it is a good devise
without attornment; the same Law is, of a
land devisable, &c.

If a man leiseth of land devisable in fee,
leaseth the same unto I. S. Clark, upon con-
dition that he shall be a Chaplain, and shall
say for the soule of the Debtor all his life,
and that after his decease the land shall re-
main unto T. S. Major of S. and his successors
to be a Chaplain perpetually for to sing for
the soule of the Debtor, and the Debtor di-
eth, and I. S. being of the age of 24 years en-
ters and holdeth the land for 6 years, & is not
a Chaplain, the heir of the debtor may enter

if the condition broken, & yet the remainder
shall not be defeated, but shall take effect after
the death of the Debtor for life, Amen quatuor.

But if there be Lessee for life, the re-
version unto a stranger in fee by deed indented
upon condition that the Lessee shall pay
the lessor 1 s. at the feast of Easter unto the lessor
his heirs, and after the condition is bro-
ken, for which the lessor doth enter: Now by
deed the remainder is defeated, because it
is all by one deed, and the condition did de-
pend upon the whole estate &c. And the lessor
cannot have a lesser estate when he entreteth for
the

34 H. 6. 7.
per Little-
ton.

20 Ass. p.

17.

Assise 28.

the condition broken, then he had at the time when he left the possession, &c. No more. If a man seised of land in fee by matter in law or in writing, can lease the same land for life reserving unto himselfe a lesser estate in reversion, then a fee, &c. And yet in the case of a devise, the remainder shall not be voided by the entry of the heir for the condition broken, because the will of the Devisor shall be observed inasmuch as it may be, &c.

565 And if a man seised of land in fee, lease the same land by deed indented for life with remainder unto a stranger in fee, reserving unto the Lessor & his heirs 10 lb. rent, and if the rent be behind, &c. that the Lessor and his heirs shall enter for the condition broken, and shall retain the land during the life of the Lessor, and no longer; If the Lessor entereth for the condition broken in the life of the Lessee, afterwards the Lessee dieth, he in the remainder may enter upon the Lessor, and have the remainder, &c. And know, that in the principal case, the remainder cannot take effect presently after the condition broken, because the devise was once effectual in the Devisee's life.

566 But if Land be devised for life, the remainder unto a Monk for his life, the remainder unto a stranger in fee; in this case the last remainder shall take effect presently after the death of the first Devisee for life, notwithstanding that the Monk be alive, &c. the reason is, because the remainder did not take effect in the Monk, and also there is a particular estate, upon which the remainder depend, and therefore in this case the remainder

in fee shall be good notwithstanding that it
be by way of grant, &c.

167 If a man seised of Land devisable in
fee, both devise the same unto a Monk for life,
the remainder unto a stranger in fee, and the
Devisor dieth, the Monk being alive. In this
case, the remainder shall take effect presently,
because the Monk took nothing by the devise;
and notwithstanding that there be not any
particular estate upon which the remainder
may depend, yet the remainder is good, for
the will of the Devisor shall be observed,
inasmuch as it may be, &c.

168 But if a lease of Land be made unto a
Monk for life, the remainder unto a stranger
in fee, this remainder is void, &c. If land be
leased unto l. S. for life, the remainder unto
l. S. in fee, and l. S. dieth before the Devisor
dieth, and then the Devisor dieth, it is a good
remainder to T. K. and shall presently take
effect, &c.

9 H. 4. 24.

3 H. 6. 47.

169 If a man seised of land devisable in fee,
both devise the same land unto l. his Son in
fee, the remainder unto a stranger in fee, and
the son dieth into the land, and saith that he will
enjoy the land as heir, and not by force of
the devise; yet notwithstanding such disa-
vowment he shall be seised by force of the De-
vise, for his father might have devised the
land unto a stranger in fee, and the son was
without remedy, and therefore if he will have
the land, he shall take it as his father gave
it unto him, for otherwise it should be at his
will and liberty. Whether the will of his fa-
ther should be observed or not, which the Law
will not suffer. But he may refuse the posses-

flon and not meddle with the fame, and fo may disagree. For a man shall not be compelled to take by a devise whether he will or no. And notwithstanding that he had so disagreed to the devise, the remainder shall not be aboished. And it seemeth to some, that then he in the remainder may enter, and presently execute the remainder, I am en quære, &c.

570 Now is to know, how the Devisees shall come by the things devised: And as to this know, that for all chartels reals and personals devised, if the Executors will not deliver, assigne, or pay them unto the Devisees, that they have no other remedy but to sue for them in the Spiritual Court, for the Lato will more respect the soul of the Devisor, then the Devisees, and therefore the Lato will not suffer the devisees to take their legacies out of the possession of the executors in despite of them, because the legacies shall not be assigned, delivered, or paid, until all the debts of the Testator be satisfied and paid, in so much as the Executors assigne, deliver, or pay the legacies, before the debts of the testator are paid, and there be not sufficient goods of the testator to pay his debts, the Executors shall be charged of their own goods, &c.

20 E. 4. 9.

2 H. 6. 15

571 And it is to know, That if the Executors will, that they may use such deceit, that the legacies shall never be assigned, delivered, or paid notwithstanding that they have the goods in their hands of the Testator of the value of one thousand pounds over and above the debts and legacies of the Devisor. For they may cause strangers to bring actions of debts against them as Executors upon the obligations

obligations, &c. And so they may always
 And when the Devises demand or sue them
 for their legacies in the spiritual Court, that
 the debts of the Testator are not paid, and
 that there are more suits against them, then
 the goods of the Testator are sufficient to sa-
 tisfie or pay: and by such covin they may de-
 mand the devises of their legacies: And the
 Executors may, or one of them may by covin
 confesse the Plaintiffs action, and execution
 may be sued against them by covin, &c. Or o-
 therwise they deny the obligations, by plead-
 ing that they were not the deeds of the Devi-
 ses, &c. And they may give such evidence, that
 it shall be found against them, &c. And by such
 suit, and others other covinous means, the
 devises may be defrauded of their legacies, for
 such decetts may be so secretly done, that they
 shall not be intended covinous. And therefore
 it shall be well for such Devisors to deliber-
 ately things, or cause them to be given or deli-
 vered unto them in their life-times, and not to
 give them by way of Legacy, and the same is
 a good and sure way to execute their intents.
 And others other good, and sure means there
 are, &c.

17. But if a man maketh two Executors, II H. 4. 84
 and by his will giveth 20 l. to one of them,
 he may take his legacy without the assent of
 the Co-executor, notwithstanding that he
 hath not administered before, &c. If the Te-
 stator hath land for the terme of xx years, and
 deviseth the same land unto one of his Ex-
 ecutors, he may enter, and occupie the land ac-
 cording to the devise without the assent of the
 other Executors, &c.

573 If the Testator hath Land for the terme of twenty yeares , and deviseth the Land for parcell of the yeares unto one of his Executors , the remainder unto a stranger, if the Executor who is the Devisee doth enter, and occupie sonly by force of the Devise, after the yeares determined. The stranger who is the Devisee in remainder may enter, and occupie the Land during the residue of the yeares, if the other goods of the Testator were sufficient to satisfie, and pay all the Testators debts. *Quere*, if the goods of the Testator be not sufficient to satisfie, and pay his debts. But it seemeth he may enter notwithstanding that, because the Devise was once created, &c.

574 But if the Testator had devised parcel of the yeares unto all the Executors, &c. The stranger who is remainder shall not enter, nor occupie without the assignment of the Executors, because it cannot appear whether they occupie the Land as Executors, or as Devisees. And therefore it shall be taken, that they occupie as Executors, and not as Devisees, for that is more for the benefit, and profit of the soule of the Testator. *Tamen quere*, how they shall be adjudged in the Land, in such case, &c.

575 If a man hath Land for term of years, and maketh his will, & deviseth the same Land unto Alice the wife of I. S. and maketh the same I. S. his Executor and dieth, and entreteth into the Land, and occupieth the same, but it doth not appear whether he occupieth the same as Executor, or in the right of his wife, and I. S. maketh his will, but saith nothing of

in his will, and maketh T. K. his executor, and diech within the terme, it shalbe that the wife who was Devisée can enter in the Land devised unto her without assignment or assent of the Executor of her husband. Tamen quære.

¶ And to come unto Free-hold, or Inheritance devised, know, That the Ordinary cannot intermeddle therewith, for such estates cannot appertain unto the Executors, if a devise of them had not ben made. And it is to be noted, that sometimes a man cannot enter in a Free-hold, or inheritance devised unto him, without assignment or libery thereof made unto him.

¶ And therefore it was used within the City of London in the tyme of King Edward 3. if a devise had ben made of tenements in London for life, in tail, or in fee, &c. the will shoulde the same oughte to have been proved in the Guild-hall of the City, and when it was proved, seisin was giben thereof. And if in default the Devisée had entered of his own right without libery or assignment, the heire shoulde have had an Ayle of Morriceancestors against him. And the same law was for tenements in Oxford devised in fee, in tail, or for life Mutuandis: which Wills so proved, and proclamations thereupon had, binde all manner of persons as strongly as a fine proclaimed, which if they die not, make their claim within one yere after the proclamations made: And so know, that a Free-hold and inheritance devisable, it shall be always according to the custome, if it be reasonable, &c.

P. 49 E. 3.
Devise 8.

578 But of free-hold and inheritance devisable, whereof such a custom to prove the will is not used, nor any other custom, but only that they are devisable: In such cases the devisees after the death of the Devisor may enter without any assignment, if the devise be of land or a house, whereof their estate ought by the devise to be presently executed.

15H.7.12. 579 And when free-hold or inheritance of lands, tenements, &c. which are at the Common Law, or in use, are devised by cestuy que use, by his will; the devise is good notwithstanding that the will be never proved, because the Ordinary hath not to do with free-hold or inheritance: And in such cases the devisees thereof may make a feoffment, gift, grant, lease, release, or confirmation, as the case shall require, by force of the Statute of 1 R. 2. c. 1. But it is to know that nothing shall pass by the devise of Cestuy que use, but that which may lawfully passe from him.

580 And therefore if a man seised of Land both thereof enfeoff J. S. unto the use of J. K. and Alice his wife, and unto the heirs of J. K. and T. K. deviseth the same land by his will unto a stranger in fee, and dieth, leaving a wife, That in this case the wife shall have the whole land during her life, notwithstanding the devise of her husband, Causa parit, &c.

CHAP. IX.

Surrenders.

NOW is to speak of Surrenders:
And first, what things may
not be surrendered by deed and
what may. And as to I know,
where a just grant, or other thing cannot
take effect without a deed, such estate or thing
cannot be surrendered without deed, if not that
be in special cases.

And therefore if a man seised of Rent-
service, Rent-charge, Rent-seck, common for
years, or, &c. in fee, &c. and granteth the same
for life or for years, by deed (as he ought) the
grantor cannot surrender the same without
deed.

But if Lessee for life be of land, or of a
house, and the Grantor granteth the reversion
unto a stranger for life, and the Lessee attorn,
the grant is void, if it be not by deed. And yet
if the Lessee dieth and the grantee entreteth into
the land, he may surrender the same without
deed & off of the land, if the surrender be made
within the County where the land is: But if
the surrender be made in another County, 12 E. 3.
it ought to be by deed, &c. And Lessee for life 19 H. 6.
surr. 4.
14 H. 7. 3.
12 E. 3.
surr. 21.
of

of land, or of a house upon condition by indentured, may surrender his estate with deed. The same law is of lessee for years.

584 Now is to shew, what estates may be surrendered, and unto what persons they may be surrendered, &c. And it is to know, that particular estates, as for life; or for years may be surrendered unto him who hath the immediate remainder, or reversion unto the particular estate in his own right, if the estate in remainder or in reversion be such an estate wherein the particular estate may be determined, if not that he who surrendreth have no joynt estate in the freehold, or in the term for years, with him unto whom the surrender is made; and in other speciall cases &c.

H. 13 H. 4.
Surr. 10.

585 And estates in fee of some things issuing out of Lands, may be determined by the surrender of the deed unto the Tenant of the Land, by which deed it was granted, &c. But it hath been holden, that an estate in fee of Lands, or Tenements, may be surrendered by the Tenant unto his Lord, who hath cause to have an action of Cellavie of the same Land. But it is clear, that Tenant in fee simple at the will of the Lord according to the custom of the Manor may surrender according unto the custom of the Manor, &c.

12 H. 6.
Surrend. 6.

586 If a man doth enfeof L. S. and T. K. in certain land, to have and to hold unto him and to the heirs of T. K. and L. S. surrenders his estate unto T. K. it is a good surrender, notwithstanding that L. S. had but freehold, and T. K. had a fee expectant to be executed in possession immediately after the death of L. S.

is, because that T. K. had a joynt
 in the Freehold which I. S. and other
 tenant is settled of the whole, so that
 surrender cannot be the cause, that he hath
 possession of any part of the land; and also
 it cannot diuise in the estate of T. K.
 for of them hath an estate of Freehold
 in and through the whole land.

If I. S. T. K. and C. D. be joynt Free-
 hold lands, to have and to hold unto them
 and the heirs of T. K. And afterwards I.
 release all his right unto D. C. and af-
 terwards D. C. doth surrender unto T. K. &c.
 and so surrender for the third part of the
 land.

If a lease for life be made of land, the
 surrender unto a stranger for life, the re-
 mainder unto another stranger in tail, and the
 tenant doth surrender unto him in the remain-
 der in tail, or unto his Lessor who hath the
 possession, living him in the remainder
 in tail. This surrender is void, to take effect
 as a surrender, because that he unto whom the
 surrender is made, hath not the immediate
 possession in remainder unto him that maketh the
 surrender. But if he who made the surrender
 had an estate for years, and in the surren-
 der there be words which amount unto a
 release of his estate, then the surrender shall
 take effect by way of grant of his estate, &c.

If a lease for life be of land, the re-
 mainder of the same land unto a stranger for
 life, and the Lessor for life doth surrender his
 estate unto him in the remainder for years, it
 shall take effect as a surrender, because that
 the estate for life cannot diuise in an estate for

12 H. 7. II.

490 If Donor of a rent in tail, &c. surrenders his estate unto his Donor who has reversion of the same land in fee, it is a surrender; but if Lessee for life be of land, remainder unto a stranger for life, and Lessee doth surrender unto him in the remainder, it is a good surrender; for he unto whom the surrender is made, hath an estate in his own life in remainder, and in fee for a mans own life is a higher estate of inheritance unto him, then the estate for the life of another man is: in the same manner as the land shall be of all rents, commons, &c. dies, &c. Mutatis mutandis, &c.

491 And it is to know, that if I. S. is tenant of the Manor of Dale in fee, and grants a rent issuing out of the same Manor, or common, or any other thing in fee, if the Tenant doth surrender the deed by which the same was granted unto him, either unto his Grantor, or unto any other person who is Tenant of the same Manor, notwithstanding that the tenant of the Manor be himself, or be others jointly seised of the same Manor, and notwithstanding that he hath not the estate for years in the same Manor in remainder; by the surrender of this deed unto the grantor, &c. is determined and extinct.

492 But if the Grantor had recited in the deed, how a rent-charge was granted unto him, and reciting in the same deed the effect of the grant, grants the same rent unto the Lessee for life of the Manor, he shall have and to hold unto him and his heirs, and shall surrender unto him the deed by which the grant was made unto him, and at the

withbereth his deed of grant unto the
 the same shall not enure nor take ef-
 to determine and extinguish the rent; but
 take effect by way of grant, to take effect
 the death of the Grantee. For at the
 of the grant made unto him, he had
 and seisin for his life of the Manor
 which the rent was issuing, so that the
 could not take effect in him presently,
 notwithstanding that, the grant shall
 effect in his heire, if some other Act
 done to hinder the same. As if the
 the grant the same rent unto a stranger, or
 purchaseth the reversion of the Ma-
 of which the rent is issuing, so as
 of the Manor is executed in him, &c.
 the Lessee in the same case enfeofeth a
 of the Manor, and the Lessor en-
 a forfeiture, the rent is determined
 and extinguished, because that the lessee had the
 the rent at the time of the feoffment, to
 to forfeit, &c. And by the feoffment
 with the land in fee discharged of
 so that by this feoffment the rent is
 and extinguished, &c.

But if the Lessor of the Manor after
 purchase of the rent commit waste in the
 Manor, or in parcel thereof, for
 the Lessor doth recover in an Action of
 the Lessor shall not have this rent
 his life: But Quere, if the Lessee
 purchase of the rent, and before any
 done, grant the rent unto a stranger,
 afterwards doth commit waste, if the
 shall commit have the rent of the Fe-
 during the life of the lessee, &c.

594 But if a man be seised of a rent-charge in fee, issuing out of a Manor, or other land, and the tenant of the rent, or of the land disseised, and the Grantor of the rent both surrender his deed of grant unto the Disseisor, so that the same is no determination of the rent at this time: And yet the Disseisor is tenant unto the Lord, as to aboven upon him, so that if the Disseisor both re-enter, then it seemeth the rent is determined and extinguished, as hath the deed of the grant of the rent in possession by force of the surrender of the deed, &c.

595 If a man seised of land in fee, granteth a rent-charge out of the same land in fee, and the Grantor dieth without heir, and before any entry made into the land by the Lord, or any other person, the Grantee doth surrender his deed of grant unto the Lord. Then if the rent be immediately determined and extinguished: because that the Lord hath possession in law in the land out of which the rent was issuing at the time of the former made; yet it seemeth the rent is immediately extinguished, &c.

596 But if a man who is tenant in tail of such a rent or common, &c. surrenders his deed of grant unto his Grantor, or unto another who is tenant of the land out of which the rent is issuing, it shall not extinguish the rent, &c. *Causa parat.*

597 But if the Grantor of a rent-charge in fee granteth the same rent in fee unto him who is seised of the land out of which the rent is issuing in fee, the same shall enure and have effect to determine and extinguish the rent,

in the Chapter of Grants, &c.

If tenant in tail doth discontinue the
in fee and die; and the issue in tail bring-
a writ of right against the Discontinuee, and
the suit lieth with the deed of entail un-
to tenant in the County, and the Tenant
the deed, doth surrender unto him, &c.
is no good surrender.

20 H. I. 21.

34 Aff. p.
11.

And notwithstanding that some parti-
estates may be surrendered in manner
as is aforesaid; yet it behoveth that
doth surrender be seised or possessed of
the estate at the time of the surrender, other-
such surrender shall not be good, if not,
in special cases.

And therefore if lessee for life, or for
years of land, be ousted of the land by a stran-
ger, and after the ouster, and before his entry,
doth surrender unto his lessor, it is no good
surrender, because he hath but a right at the
time of the surrender, &c. And therefore if a
man hath title to have dower by the com-
mon law, and he doth surrender unto him a-
gainst whom he ought to have dower, it is a
good surrender.

If a lease for ten years be made to be-
gin the feast of St. Michael the Arch Angel
after the lease, and before the feast of St.
Michael, the lessee doth surrender unto his lessor,
it is no good surrender, yet he may grant
the same before the said feast of St. Michael.
The surrender is not good, because that the
lessor is not in seisin and possession legaliter of
the land leased before the feast of St. Michael
&c.

And a release made by the lessor unto
the

the lessee before the Terme doth begin is bold and notwithstanding that the lessee before the Terme doth begin doth enter into the thing leased unto him, and do an act which amounteth unto waste, the lessor shall not have an action of waste for the same. And if the lessee after the terme begun, and before he doth enter by force of the lease, doth surrender unto his lessor, it seemeth to be a bold surrender, if any other person be in possession of the thing leased at the time of the surrender, if not if he hath parcel of the term of the lessee, by force of the grant of the lessee, &c.

603. If a man seised of land doth lease the same for ten years to begin presently, and the lessor walbeth the possession, and before any entry made into the same land by any person the lessee doth surrender his estate unto his lessor, this is a good surrender, and yet the lessor shall not have an action of Trespass, for trespass done upon the land before his entry, and also a release made unto him by his lessor is void before his entry, &c.

604 And if there be lessee for ten years of land, and he granteth parcel of the years unto a stranger, and the Grantee doth enter, &c. and the lessee doth surrender unto his lessor, it is a good surrender: but if the Grantee of the lessee had surrendered unto the lessor of the grantor before the surrender made by the lessee, the same shall not take effect as a surrender.

14 H. 7. 3. Causa parat.

605 If there be lessee for years of land, the remainder of the same land unto a stranger for life, the remainder unto another in fee, and during the years, he in the remainder for

doth surrender unto him in fee, it is a good
surrender: but if in the same case the lessee for
years had been put out of the land by one that
has no right, and he who put him out dyeth
before the same of the same land and his heir doth enter,
unto whom the Lessee for years doth enter,
then he in the remainder for life doth sur-
render unto him in the remainder in fee, the
same is a void surrender, because he had but a
right to the remainder, and also he unto whom
the surrender was made, had but a right of
the remainder in fee, at the time of the surrender;

¶ If there be Grant of a Rent charge
unto a stranger is pernor of the rent, and
the Grant doth surrender his deed by which
the grant of the rent was made unto the tenant
of the land, the same shall determine and ex-
tinguish the rent, notwithstanding that the
rent may be made with the assent of the tenant
of the land, &c. And it is to know, that there
are two manner of surrenders, viz. A surren-
der in deed, and a surrender in law. And first;
we speak of a surrender in deed, and what
may make such a surrender.

¶ And as unto that, know, that when the
tenant doth give a sufficient assent, and will of
him who is the particular tenant, that he in
the remainder or the reversion shall have the
land which he hath or holdeth. They are
sufficient to make a surrender, if he
unto whom the surrender is made doth agree
thereto.

¶ And therefore, if Lessee for life or for ⁴⁰E.3.24
years of land say unto his Lessor, that his will
is, that his Lessor shall enter into the land
which

6 E. 3. 7.

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which he holdeth for life, or for years, shall have the same, and by force thereof lessor doth enter into the same, it is a good surrender, and so shall it be, if he say unto lessor, or unto him in the remainder, or reversion, that he will that he have the land, or lessor doth enter by force thereof, or agree thereunto, it is a good surrender. But if lessor, or, &c. doth not enter by force thereof, nor agree thereunto, the surrender is not good; for he cannot surrender unto him against his will: But if he unto whom the surrender is made do once agree to the same, he cannot afterwards disagree thereunto. And in the time of King Edward 1. the lessor did enter to the land leased for life, with the assent of the lessee: and because it was not in the presence of men of good credit, it was holden to be a good surrender. But the law is otherwise this day, &c.

609 And if the lessee cometh unto him in the remainder, or in the reversion, and saith unto him, that he will occupy the land no longer, and he in the remainder by force thereof doth enter, it is a good surrender. And if the lessor doth say unto his lessee, I do surrender unto you the land which I hold of your lease, or he saith, I hold such land, or house, &c. or sheweth certain the land or house, &c. of the lease, and I do surrender the same land or house, &c. unto you, and the lessor doth enter thereunto, the same is a good surrender.

610 And if I. S. holdeth one acre of land for years of the lease of C. D. and holdeth another acre of land for life of the lease of the same C. D. And I. S. doth say unto C. D. I surrender

you all the land which I hold of your
 lease, it is a good surrender for both acres :
 so shall it be, if he say, I surrender unto
 the land I hold of your lease, for in so
 much as he doth not expresse what land, it
 shall be taken for all the land which he hold-
 eth of his lease, because the surrender is his
 by deed; and the same shall be taken
 longest against him, &c. But if he had
 surrendered the land which he held of his lease
 for years, he shall not have by this surrender
 the land which he held for his life, so shall it
 be converso, &c.

Item If I hold one acre of land for life of
 the lease of the father of I. S. and I hold one
 other acre for life or years of the lease of I. S. &
 surrender unto I. S. the land which I hold of
 the lease, by this surrender he shall not have
 the land which I hold of the lease of his fa-
 ther notwithstanding that the reversion of the
 one acre be in him by descent from his fa-
 ther, &c.

Item If a woman who is Tenant in dower
 hath a Husband, and the Husband doth
 surrender the Land which he holdeth in the
 right of his wife, for the life of the wife, it
 is a good surrender during the coverture.
 And if the Husband dieth before the wife :
 if they be divorced, *Causa præ-contractus*,
 the wife may enter, and defeat the surrender,
 notwithstanding that he to whom the surren-
 der was made died seised of the land in his de-
 scend as of fee, and his heir be in by descent.
 The same Law is, if the surrender be made
 by the husband and wife, &c.

613 But if a single woman who is seised for years of land, or a house, &c. taketh a husband, and the Husband doth surrender the Land, and dieth before the years are determined, yet the Surrender shall stand. If a man be seised of land for the life of his wife, in the right of his wife, and he and his wife will surrender the same land by fine, the wife shall be examined, because she giveth by fine; and a particular tenant cannot surrender by fine, unless he be not named in the writ whereupon the fine shall be levied.

25 E. 3.

Durles 13.

614 A surrender made by an Infant in word of the land is not good, inasmuch as he surrendereth an estate of Freehold, and for the force hereof he is to whom the Surrender is made doth enter, the Infant shall have an Annulment. The same Law is of a Surrender made by a person under the restraint of imprisonment; a Surrender made by a man who is not Compos mentis, is good for the Tenant, Tamen quere, &c.

5 E. 4. 4.

615 If two men seised of land in fee, lease the same Land unto a Stranger for life for years, and he doth surrender all his estate in the Land unto one of them, the same shall revert unto them both. See the reason thereof in the Chapter of Grants, &c. But if the Tenant for life hath surrendered the lands unto the Lessors, or unto one of them for years, the same shall not take effect by way of Surrender for then there remaineth an interest in the Lessor, which is as a mean remaining between the estate which is surrendered and the reversion, &c. In the same manner as it is of the Surrender of land, so shall it be of Surrender of Doves, or of any other things, Muratis et Randis, &c.

616 If a man seised of land, leaseeth the same land for life, and granteth the remainder unto a stranger for life, and the Lessee for life granteth his estate unto him in the remainder for life, the Law saith that this shall enure by way of surrender: So shall it be, if the lessee for life doth enfeof him in the remainder for life. The same law is, if a man seised of land leaseeth the same for life, and the Lessee thereof enfeof his Lessor, &c. 14 H. 8. 15.

617 If lessee for ten years of land, doth take a new lease of the same land of his lessor for years, it is a surrender of the first lease, &c. And if lessee for life or years of a house, and doth remove his goods and chattels out of the house and land, by reason of the greatnesse of the rent, or because he is behind in his rent, or any other cause, and the Lessor doth enter into the house and land, this is no surrender: For it doth not appear that the will of the lessee is, that his lessor shall have the house and land, but that he waiveth the possession for his own advantage. 1 Aff. p. 20 T. 8. E. 3. 46.

618 If lessee for life of land granteth his estate unto him in the reversion, and unto two or more men, it is a surrender for no part. And if there be Lord, and tenant by fealty and service, and the Lord granteth his Seignory unto the Tenant, and a stranger in fee the service of the rent shall be extinguished in the Tenant, for it should be inconvenient, that the Tenant should have reversion of the rent with the fealty, the Grantee shall have the same, &c. M. 7 H. 6. P. 34 H. 6. 41.

619 But when lessee for life of land granteth

eth his estate unto him in the reversion, and unto two others, he alone hath not interest, and estate in the freehold, but he hath a joyne estate with others in the freehold, so that if they surbive, they shall have the whole freehold by the survivoꝝship: And also he in the reversion had nothing in the freehold before the grant. And it is not impertinent but that he in the reversion may take livery of seisin and estate in the same freehold for the advantage of another person. And if lessee for

30 E. 3. 3.

life be, the remainder for life, and the lessee for life doth commit waste, this waste is punishable at this time for the advantage of him in the remainder for life, &c. See other reasons concerning this matter in the Chapter of Grants, &c.

7 H. 6. 4.

620 If lessee for life granteth his estate unto him in the reversion, the remainder unto a stranger in fee, it seemeth this remainder is void, because that when he in the reversion alone is to take the whole, and all the estate which was out of him, and no more, and he hath the reversion in his own right, It shall be hard that he shall take by livery of seisin. And so it seemeth that the grant shall enure by way of Surrender, and that the remainder is void, Tamen quære, because that the livery of seisin is made upon the whole deed, and by the same deed the remainder is granted unto the stranger, and so it is unto the profit and benefit of the reversion for life, &c. But if lessee for life

M. 39 E. 3.

29.

41 E. 3. 29.

41 Aff. p. 2.

in fee, the same is no surrender, Causa patet.

621 If there be lessee for life of land, the remainder

under in tail unto a stranger, the remainder in tail unto another man, the remainder unto the right heirs of the lessee, & the lessee thereof enfeoff him in the first remainder in tail, and his wife in fee, and the husband with without issue, living the lessee, and he in the second remainder doth enter and put out his wife, she shall have an assise because she shall have the land during the life of the lessee who was his feoffor. Tamen quære. And if he in the second remainder in tail dieth without issue, leaving the wife, then he shall retain the land unto him and his heirs for ever, &c.

¶ If a single woman seised of land in fee granteth the same unto a stranger for life, and then a husband, and the lessee doth grant his estate unto the husband, this is no surrender: And yet the husband is seised of the reversion in fee, which is immediate unto the estate of the lessee, viz. in the right of his wife, and not in his own right, &c.

¶ If lessee for life be of land, the reversion be unto two coparceners, and one of them take a husband, and the lessee granteth his estate unto her and her husband, this is no surrender: But if tenant in dower be of lands, and she granteth her estate unto him in the reversion reserving rent, and the grantee taketh his wife, and dieth, his wife shall have dower; and probeth that the grant doth enure by way of surrender; And yet the reservation shall be good if it be by deed indented, to take effect by way of grant &c. But the Tenant in dower shall not distrain for the rent because she had no reversion, and no clause of distress in the deed; And shee shall not have an

action of debt because he hath an estate of freehold in the Rent; but he shall have the same as a Rent-seek: more shall be said of this in the Chapter of Reservations.

¶ E. 4. 34.

624 And it is to know, that a surrender of a freehold made by deed indented upon condition is good: And if the surrender be of an estate for years in land, then the surrender may be upon condition without deed: And if a surrender be made of the Free hold by deed indented upon condition, that if he to whom the surrender is made, do not goe unto Yorke within one moneth next following the date of the surrender, that then it shall be lawful for him who made the surrender to re-enter into the land, the same is a good surrender upon condition.

CHAP.

CHAP. X.

Reservations.



NOW is to speak of Reservations. And as to that, know, That there are many words by which a man may reserve unto himselfe that which was not in him before, and abidge the tenure of that which was in him before; viz. Tenendum, Reservandum, Reddendum, Solvendum, Faciendum, and other the like. And there are divers words by which a man cannot properly reserve any thing, but those which were in him before, viz. Exceptis, Reservatis, præter, salvis, and other the like, &c.

616 And therefore if a man be leased M. 21 E. 3.
 in fee, of one acre of land, hee may let the 49.
 same acre for life, to hold of him by fealty and
 ten shillings rent, and if the fealty or the rent
 be behinde, he may distrain, and yet the same
 man in Esse before; See the reason thereof in
 the Book of M. Littleton, in the Chapter of
 Wents, and see there many good Cases con-
 cerning Reservations. And it is to know,
 that a Reservation ought to be out of such a
 thing unto which a man may resort for to
 take

take a distresse, as out of land, or a house and not out of a Rent, &c. if not that the Reservation be made by our soveraign Lord the King, of whose title I will not speak.

627 But if there be Lord, Mesne, and Tenant, and the Mesne giveth the menalty in tail, reserving fealty, and rent, this is a good reservation, because the tenancy may come unto the Donee; But the Donor nor his heirs shall not distrain for the fealty, nor the rent, notwithstanding that they be behinde, before the tenancy be come unto the Donee, and then he shall distrain for all the arrerages from the time of the gift, and the Donee shall not avoid the same.

P. 12 E. 4. 628 If there be Lord, and Tenant by fealty, and 12 pence and the Lord releaseth or confirmeth the estate of the tenant, to hold of him

11.

M. 8 E. 4. 8. Lord by this 1 d. and more before, &c. And if a man seised of land, doth give the same in tail, reserving 12 d. the same is a good reservation, by the word Reservandum.

629 If there be Lord, and Tenant by fealty, and xii d. And the Lord doth release all his right unto the Tenant, or confirmeth the estate of the Tenant, reserving unto him 1 d.

F. 44 E. 3. 22. It is good, yet it was in esse before, &c. And if the husband and wife grant, and render a Manor for terme of life by fine, rendering

the first yeare 1 d. and for six yeares then next following every yeare a Kose at the Feast of Easter, and after the six yeares every year 10 l. in money, with clause of distresse; This fine shall be received; but a fine with clause of entry shall not be received, because that then

estate should be defeisable, which is against the nature of a fine, &c. For finis finem nobis imponit, &c.

630 If a man seised of land, leaseth the same for life, rendring for the first 6 yeares 3 quarters of wheat; and if he hold over, &c. yielding 5 l. by the year, this is a good reservation by this word Reddendum, &c.

631 If there be Lord and tenant by knights service and 20 s. rent, and the Lord confirmeth the estate of the Tenant, rendring unto him onely homage, fealty, and escuage when it shall be assessed by Parliament unto 40 s. 10 s. and when lesse, lesse, by this confirmation the 20 s. rent is determined, and yet this word (Reddendum) is more properly the word of the confirmer, then of the confirmee, &c.

632 And if a man seised of land, leaseth the same for life, or giveth it in tail, Solvend. sibi & hærend. suis annuatim, 20 d. it is a good Reservation. And if there be Lord and Tenant by fealty and 12 pence, and the Lord doth confirme the estate of the Tenant, Ad solvendum sibi 1 d. the same is good. And if a man seised of land, leaseth the same for life, or giveth the same in talle unto a stranger, Pro homagio suo faciundo, it is a good Reservation, &c.

633 If there be Lord and Tenant by Fealty, and 12 d. and the Lord doth confirm the estate of the tenant Ad faciendum sibi fidelitatem annuum, it is a good confirmation, and by the same the rent shall be determined, &c. And it is to know, that every thing which is reserved by any of the words aforesaid, ought to be within the purport of the same words, otherwise

22 H. 3.

gard. 151.

13 R. 2. A.

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P. 49 E. 3.

10.

otherwise the reservation is not good, if not, that it be in special cases, &c.

634 If there be Lord, & Tenant by knights service, and the Tenant giveth the Tenancy in tail, *Faciendum forinsecum servitium quantum ad eandem terram pertinet*. By these words the Donee shall hold of the Donor by knights service, &c.

635 If there be Lord & Tenant by knights service, and the Tenant before the Statute of West. 3. called *Quia emptores terrarum* lex, leaveth a fine of the tenancy upon a grant, and render unto C. D. *Reddend. inde ad testum Nativitat. Sancti Johannes Baptiste annuatim*, i. e. *Pro omnibus serviciis secularibus & demandis. Et faciendo capitalibus Dominis feodi illius per predict.* The tenant who levieth the fine Hired, & assign. his omnia servicia debita, & consueta; In this case the Conusée holdeth of the Conusor by knights service, notwithstanding that he doth expresse that he shall do the services Capitalibus Dominis; for by these words in this case he shall not hold *De capitali. Dom.* because there is a tenure before expressed in the fine, viz. by these words, *Reddend. inde annuatim ad testum, &c.* which words make a tenure of the Conusor, so that if he shall hold *De Capitali Dom.* then he should hold the land of two several Lords, the which the law will not suffer in this case. But if these words were not in the note of the fine, viz. *Reddend. inde ad testum Sancti Johannes Baptiste annuatim*, i. e. *pro omnibus serviciis secularibus & demandis.* Then by the other words the Conusée ought to hold of the Lord paramount by the like service, as the Conusor held, &c.

M. 2 E. 3.
33.

46 Two joynt-tenants of land, or houses, by a special means may hold by several services. As put the case, there be Lord and two Joynt-tenants of two acres of land by feoffment and 12 pence, and one of them at this day doth enfeoff a stranger of that which doth belong unto him upon condition. In this case the feoffee shall hold of the Lord by fealty and 12 pence: And if the Lord granteth unto a stranger the service of the feoffee, and the feoffee hath attorned, and afterwards the condition be broken, and the feoffor entreateth: In this case the feoffor and the other joynt-tenants are joynt-tenants as they were before the feoffment made, and yet they hold by several services, and of several Lords, but not the same land, for one joynt-tenant holdeth one moiety of one Lord, the other joynt-tenant holdeth the other, of the whole said moiety of the other land, &c.

47 If there be Lord and Tenant, and the tenant at this day doth give the tenancy in tail, Tenendum de capitali Dom. this Tenendum is hold, because that the Law hath made a tenure betwixt the Donor, and the Donee, &c. And then if the Tenendum should be good, he should hold the same land of two Lords which the law will not suffer, if not that it be by matter of conclusion, &c.

48 If a man be seised of a Manor in fee, in which Manor there is a Mill for the grinding of wheat, and other grain; and before the Statute of Quia emptores terrarum, he doth enfeoff certain tenants of the Manor, of part of the Manor, doing suit at his Mill, this is a good tenure by the word (doing.) And it is

9 Aff. p. 14. is said, if the feoffor leaseth the Manor unto
 M. 9 E. 3. 3. a stranger for life, rendering unto him 40 s.
 for the Manor, and 30 s. for the mulcture, and
 the tenants of the Manor attorn unto the lessee,
 that the 30 s. are a rent-charge issuing out
 of the whole Manor, &c.

639 And it is to know, that these words
 (Exceptis, & præter) are always of such things
 which the Feoffor, Donor, Grantor, Lessor,
 Releaseor, or Confirmor, have in possession at
 the time of the feoffment, gift, grant, lease,
 release and confirmation: And therefore if a
 man seised of land, leaseth the same land for
 life, Exceptis xii d. or Præter xii d. it is no
 Reservation, Causa patet, &c.

640 But if a man seised of land in fee, leaseth
 the same for life, Reservatis sibi inde xii d.
 this is as well as if he had said, Reservatis
 sibi inde xii d. For there is not any difference
 but one sentence, ponitur absolute, and the other
 ponitur gerundive.

641 But if a man be seised of four acres of
 land, and of a house within the Town of Dale
 wherein is a Chamber, and doth enfeof a
 stranger by deed of all his land and tenements
 which he hath in the Town of Dale, Exceptis
 or reservato sibi, the Chamber, or præter the
 Chamber, and sheweth the certainty thereof
 in that case the Chamber shall not pass by the
 feoffment, &c.

T. 22 E. 3. 8. 642 If a man seised of a Manor leaseth the
 same Manor by deed indented unto a stranger
 for life, Exceptis & reservatis, to the lessor, Om-
 nibus grossis arboribus in dicto manerio crescentibus
 By this Lease the great Trees shall not
 passe.

643 And if a man seised of a Manor, doth 3 H. 6. 46.
 sell the same Manor by deed indented for
 life, Exceptis & reservatis quod benè liceat, to the
 issue, Succidere dare & vendere omnes grossas
 arbores in dicto manerio crescentes, &c. Quere,
 if the great Trees shall passe by the lease, &c.
 A man seised of a Manor unto which an Ad-
 vovson is appendant, doth thereof enfeoff a
 stranger, Exceptis, reservatis, &c. or prater one
 acre and nameth the acre, and the Advovson,
 this a good exception: and the acre, nor the
 Advovson shall not passe by the feoffment;
 and the Advovson shall be appendant unto the
 acre which is reserved, &c.

644 If a man hath a rent-charge in fee iss-
 uing out of land, and by fine he doth release
 unto the tenant of the land all the right which
 he hath unto the land, Reservat. Excep. & præ-
 ter, the rent, it is a void exception. And so it
 is of a grant, confirmation, &c. Mutatis mu-
 tatis, &c. And if a man selleth a wood ex- 16 E. 3.
 cept twenty Oaks and sheweth which in cer- Fines 6.
 tain, it is a good exception.

645 And it is to know, that this word (sal-
 vo) shall be a good exception of such things
 which are in the possession of the feoffor, Do-
 nor, &c. at the time of the feoffment, gift, &c.
 And also this word (salvo) giveth a new
 thing unto the feoffor or Donor, which was
 not in him before, &c.

646 If a man be seised of a water in which
 he hath a fishing from the Town of Dale in the
 County of Middlesex unto the Town of Sale
 in the same County, and upon the same wa-
 ter he hath a Mill; and he doth grant unto a
 stranger

34 Aff. p.
11.

a stranger, Totam partem piscariae suae de
quam procul terr. inde extendant, Ita quod
ipse, nec heredes sui, nec molendinarii de
terro cum retibus nec aliis ingen. piscar. Salvo
men stagno molendini, this exception shall
not ouste the Grantee of the fishing in the lake
pool, and this (Salvo) shall have relation, on-
ly for the repairing of the Mill, and to do such
things as are necessary unto the Mill, &c.
But if I grant common unto a stranger, for
all manner of Cattel within my Manor
C Date saving in one acre, and name the acre,
the Grantee shall have Common in that acre
&c.

T. 12 E. 4.
11.

647 If there be Lord, and Tenant by feal-
ty and xii d. rent, and the Lord doth release
all his right unto the tenant, saving to him
his rent, it is a good reservation, and the
Lord shall have the rent in the same nature
he had it before.

29 Aff. p.
20.

648 If there be Lord and tenant by knight-
service, viz. by homage, fealty, and escuage
and xii d. Rent, and the lord doth grant the
rent unto a stranger, saving unto him his ser-
vice, it is a good saving. But notwithstanding
that, the Lord shall have the escuage, and
yet it is not but a payment of money if the
tenant will: and the Grantee shall have the
d. rent as a rent-seck, &c.

M. 2 H. 3.
89.

649 If a man hath a Parsonage, and
Tithcarage unto the same Church, and doth
Advowson. And by fine he granteth unto
a stranger the Advowson of the same Church
saving unto the Grantor, and his heirs, the
presentation unto the Tithcarage, it is a good
saving, &c.

10. If there be Lord & tenant by knights
 service, and the tenant doth give the tenancy
 to hold of him by one penny for all ser-
 vices, *Salvo forinsecro servitio*. In this case this
 tenant shall make the Donor to hold of the Do-
 nor by Knights service, and yet the same was
 in the Donor before, but the Donor was
 agreeable with Knights service for the same 31 Aff. p:
 land, unto him of whom he held it. *Forinsecum* 30.
vicium is such service by which the Donor 26 Aff. p.
 had the same land, which he gave, &c. See 66.
 11. good Cases concerning Exceptions of 27 Aff. p:
 lands in the Chapter of Deeds, and Condi- 52.
 tions, &c.

12. Now is to shew what persons may by
 reservations make a tenure. And unto
 what persons they may make such tenure, and
 what things may be reserved to make a
 tenure: And when the heires of him unto
 whom the Reservation is made, shall have
 the things reserved. And then something
 shall be said when the Reservation of collate-
 dages (which cannot make a tenure) shall
 hold, and when not, &c. And it is to know,
 what before the Statute of *Quia emptores ter-
 rarum*. That he who made an estate unto an-
 other in Lands, or Houses, might make a re-
 servation upon the same estate according un-
 der the interest which he departed with, if not,
 it were in special Cases, &c.

13. And therefore if before the Statute of
Quia emptores terrarum, there were two joynt-
 tenants of lands, or houses in fee, which they
 held by fealty, and 2 s. Rent, Or by fealty
 and homage, and they enfeof a stranger of the
 same or Houses, to hold of one of them

by fealty and xii d. The feoffee shall hold the moiety of him, by fealty and xii d. because the feoffment he did depart but with him in right, and yet he shall have the whole which is reserved, notwithstanding that it is a feveral rent, because it is reserved only to him, and he may well reserve the land to him alone, notwithstanding that he joined the feoffment with his companion, &c. And the feoffee shall hold the other moiety of the joint-tenant, to whom the reservation was not made by fealty, and xii d. Rent, and his companion shall hold together the whole land over by two shillings, because then the Rent is feveral; and if they themselves hold the same land over by a bond, it is said, that the feoffee shall hold the moiety of him by fealty and a horse, because he was party unto the reservation made unto his companion &c. But if the joint-tenants both enfeoffeth a stranger to hold both of them, or of one of them, and pay no services, they are void words, and the feoffee shall hold of them as they held over.

§ 53. If two joint-tenants were of land and before the Statute of Quia emptores totum, one of them enfeoffeth a stranger of the thereof belongeth unto him without releasing any thing, the feoffee shall hold of his lord by the moiety of the services by which the feoffor, and his joint companion held over, they hold over by several services, &c. Notwithstanding this feoffment, the feoffee and he who was his joint companion shall hold the same land over of their Lord as they held before, so as the abovesaid of the Statute.

altered by this feoffment. And also the
shall not disclaim the Cattel of him
as his joynt-companion, because he hath
interest in the land by a more ancient title
than his feignory began, &c.

It before the Statute of Quia emptores
terrarum, there had been Lord, Mesne, and
Tenant, and the Mesne, and the Tenant had
been married, the same should not have altered
the Lord's advowry: Or if the Tenant
had alienated the Mesne of the tenancy, it
should not have altered the advowry of the
Lord, &c.

It Lord, two joynt-tenants, Mesne,
Tenant had been, and every of them held of
the Lord by fealty, 6 xii d. And the tenant had
alienated one of the joynt-tenant mesnes before
the Statute of Quia emptores terrarum, of the
tenancy, it seemeth the feoffee shall hold
the moiety of the tenancy of him, who was his
joynt-tenant mesne by fealty, and 6 d. rent:
inasmuch as his joynt mesne might have
alienated what belonged unto him of the me-
sne unto a stranger, and his grant should
have been good, with attornment of the te-
nant, notwithstanding that it were but by
the way of writing; and if it were by matter
of record, it should be good without attorn-
ment of the tenant, &c. And if the Mesne who
was the feoffment, before the feoffment had
alienated all his right in the tenancy unto the
feoffee, by this release the moiety of the menal-
ty should be extinguished, & no more. So that
notwithstanding this release, his joynt mesne
should stand upon the tenant, for the moiety of
the manalty, viz. for fealty and 6 d. So that

5 E. 3. 31.

it appeareth that by the feoffment made of one Mesne, there is but a moiety of the moiety extinct, viz. the moiety which in right belong unto the Feoffee, and no more, so as for one moiety of $\frac{1}{2}$ tenancy, there are two Mesne, and Tenant, And for the other moiety of the tenancy, Lord, and Tenant.

656 If before the Stat. of Quia emptores terrarum, there had been Father and two Daughters, and the Father being seised of one acre of land, thereof enfeoffed his eldest daughter to hold of him, and his heir by fealty and pence, and the father dieth, and the Daughter descendeth unto the two Daughters. For the eldest Daughter shall hold of her younger sister by fealty & 6 d. But if the eldest daughter being seised of one acre of Land before the Statute of Quia emptores terrarum, had then enfeoffed her Father, to hold of her and her heirs by fealty and 6 d. and the Father then of die seised, and the two Daughters came into the same acre as Daughters, and their heir unto their Father: In this case the eldest Daughter shall not distrain for Rent, during the time set in possession Common with her Sister. But after Partition is made betwixen her, and her sister, the sister shall hold her part of her, by fealty, and three pence, &c.

33 Aff. p.
15.

657 If before the Statute of Quia emptores terrarum, Lord and Tenant had been in Carbe of land by Knights service and the Tenant had been disseised of the land, and the Uncle of the tenant had released all his right which he had in the moiety of the tenancy unto the Disseisor, and by the same deed of release

bound him, and his heirs to warrant the
moity, unto the Disseisor; and his heirs,
the Uncle dieth without issue, and the
tenancy descendeth upon the Disseisor, and
the Disseisor taketh a wife; and hath issue a
son, and the Disseisor enfeoffeth the son of the
tenancy, to hold of him by Knights service,
and afterwards the father dieth. Now the son
is admitted unto the moity of the tenancy, and
shall hold the same moity by priority, &c. and
the other moity he shall hold by posteriority, &c.
¶ If before the Statute of Quia emptores
terrarum, a man being seised of one acre of
land, leaseth the same acre unto a stranger for
life, and afterwards granteth the reversion in
fee unto another stranger, to hold of him & his
heirs by knights service, this is a good tenure;
for the Grantor shall not distrain for the ser-
vice, during the life of the lessee, &c.

¶ And if before the Statute of Quia emp-
tores terrarum, a man seised of one acre of
land, leaseth the same acre for life, and after-
wards releaseth all his right in the same acre
unto the lessee, to have and to hold un-
der him, and his heirs, &c. Or confirmeth the
lease of the lessee, to have and hold the same a-
gainst him, and his heirs, to hold of him by
knights service; the Releasor may distrain
for such services, or any of them: in the Land,
whereof the lease, release, or confirmation
was made, as often as the same shall be bo-
und, &c.

¶ If a man seised of land in fee in the
right of his wife, and before the Statute of
Quia emptores terrarum, the husband alone
enfeoffeth a stranger without saying
more.

H. 6. 14.

more. The Feoffee shall hold of the husband by such services, as the husband and his wife held over, for the husband alone did not hold over. But if the husband and wife have joined in the feoffment, to hold of the husband, these words (to hold of the husband) are both. And the Feoffee shall hold of the husband and wife by such services as they held over, inasmuch that if the husband dieth, and the wife after the death of her husband accepteth the services from the Feoffee, she shall maintain the feoffment in a *Cui in vita*. And if the husband and wife have joined in the feoffment to hold of the wife without more saying, the Feoffee shall hold of the husband and wife, inasmuch that if the wife dieth, the Feoffee shall hold of the husband until the feoffment be bolded by the heir of the wife in a *Cui in vita* &c. And then the Heir shall hold of the Feoffee paramount.

P. 10 E. 4.

5.

661 If before the Statute of *Quia emporum*, two coverseurs were of a *Land in fee*, and one of them released his right, &c. into his companion reserving it to a good Reservation, because the release is in the part of his releasor, on *se per*, by the part of the release.

662 But if two joint-tenants be of a *Land in fee*, and before the Statute of *Quia emporum*, &c. one of them released his right in the Land into his companion, reserving himself, the same is a hold reservation to make a tenure. But if perhaps such releases were by deed indented, and words of grant or release, &c. were comprised within the release, or only words of reservation without more.

ment, then the Lessor shall have the rent
as a Rent-ferm: and if the reservation
be with words of distresse, then the Re-
sor shall have it as a Rent-charge.

If Lord and Tenant are in fe by fe-
alty, and xii d. and before the Statute, ac.
the Lord releaseth unto the Tenant all his
right in the tenancy, to hold of him by xx d.
a bold seigniorie, because that he departed
his estate executed nor to be executed here-
after by the release upon which he created the
tenure.

17 E. 3. 69.

If before the Statute of Quia emptio-
re a man seised of land in fee, doth there-
of enfeof a stranger to hold of him and his
heirs by xx d. It is a bold tenure as unto the
lord, and it is a good tenure for the whole
term as to himselfe, ac. And it is said, the
wife is, because the wife is a stranger unto
the husband: But notwithstanding that the
husband was a party to the feoffment, ac. if the
husband doth anything in the land whereof the feoffment
was made, at the time of the feoffment, yet
the tenure is bold as unto the wife, if it be
by fine, because she departeth with no pos-
session nor estate, ac. But it shall be altogeth-
er the feoffment of the husband: But if the
husband be by fine then it shall be good unto the
wife by way of conclusion, ac.

M. 11 H. 4.

If a man seised of Land, and before the
Statute, ac. do thereof enfeof a stranger, to
him and his heirs and fealty unto another stranger,
nothing worth, for service cannot be done
by any other then the Lord. And yet the
husband or other servant of the Lord may re-
lease the fealty for the Lord, ac. But the fealty

11 E. 4. 2.

32 E. 4. 3.

is made unto the Lord, notwithstanding
he be not present.

666 But if before the Statute, &c. A man
being seised of land in fee, doth thereof enfeoff
a stranger, to be the Butler unto another
stranger, or to pay unto a stranger 10 s. yearly
at the feast of Easter; or to cover the house
of another stranger, this is no tenure in fee,
whose house shall be covered, or, &c. nor shall
be any remedy, if the feoffee do not the same;
but the feoffee holdeth of the feoffor, and in
such case the rent be not paid, &c. the feoffor
may distrain, &c.

F. 7 E. 4.

II.

P. 2 E. 4, 5.

667 If there were Lord, Mesne, and Tenant,
and before the Statute, the tenant do
enfeoff a stranger of the tenancy, to hold of the
Lord paramount, the same is void: But if the
feoffment were made to hold of the Mesne,
were good and he shall hold of him by the same
services, which the feoffor held of the Mesne.
But the Tenant cannot make a new tenure
between the Mesne, and his feoffee by new
services, for to the services reserved the Mesne
is a stranger: And if the tenant had enfeoffed
a stranger before the Statute, &c. to hold
of him, and the Mesne, the feoffee should
holden only of his feoffor.

668 And if the Tenant before the Statute
had enfeoffed l. s. to hold of the Mesne, &c.
F. K. the feoffee should have holden only of
the Mesne. If there had been a woman seised
before the Statute, and tenant, and the
woman had taken husband, and the Tenant
enfeoffeth a stranger, to hold of the husband,
it is a void tenure, and the feoffee shall hold
of his feoffor, &c. And if there had been the

the **Seigniors and Tenant**: And before
the Statute the tenant had enfeoffed a stranger
in part of him, and one of the joynt Lords, it
hold tenure, and the feoffee should hold of
the feoffor.

679 If Lord and Tenant had been before
the Statute, &c. And the Lord granteth his
seignior unto a stranger, and the tenant en-
feoffed another stranger, to hold of the grantee
of the Lord, the same had amounted unto an
attornment, and also to make a new tenure,
and yet the grantee is a stranger unto the re-
vocation of the seignior between the Gran-
tor and the Tenant. But as to that, it may
be said, that there is a privy by matter in
of the Statute, viz. by the grant with the attornment,
and so shall be, notwithstanding that the Lord
granted the same unto the use of the gran-
tee, &c. And the same Law is where a menal-
tenant doth escheat, Mutatis mutandis. And if there
had been Lord, and two joynt-tenants before
the Statute, &c. and they had enfeoffed a stran-
ger, and one of them had assigned the feoffee to
hold of the Lord paramount, and the other
had assigned the feoffee to hold of himselfe, &c.
the same had been good, &c.

680 If Lord and Tenant had been before
the Statute, of two acres of land, and the
tenant did thereof enfeoff a stranger, to hold
of the Lord paramount, and to hold
of the other acre of him, the same is good, &c. And
it is to know, That the beginning of a Ma-
norialty was, when the King gave a thousand
acres of lands, or a greater or lesser parcell
of land unto one of his Subjects, and his
heirs, to hold of him and his heirs, which
tenure

sonne in Knights service at the least. The Donor did perhaps build a mansion upon parcel of the same land, and of the other parcel of that which remained, a greater or lesser parcel before the Donor. Quia emptores, &c. did enfeoff a stranger hold of him, and his heirs, as of the same manor-house, to plow ten acres of arable land parcel of that which remained in his possession, and did enfeoff another of another parcel, &c. to carry his thing unto the Land, &c. did enfeoff another of another parcel, &c. To goe with him to war against the King, &c. And so by continuance of time he made many more, &c.

671 And if a man be seised of the Manor of Dale in fee, and another man hold of him as of his Manor of Dale, to cover the Hall, or house of the same Manor, if the house fall, and be not re-edified by the space of seven years, or for a greater or lesser time. Now for this, the tenant which holdeth by such service is not charged: But when such house is re-edified, the Tenant is bound to do the service, if it be not re-built longer, or larger, so as it shall be more chargeable unto the Tenant for to build the house now, then it was at the time the tenure was created: And if the house be in the same manner re-edified, quite, if the tenant be bounden to cover so much thereof as he should mount unto the length, and breadth, when it was when the tenure was created. And if such a house be thrown down by the Enemies unto the King, who enter into the Realm with a great Army for to conquer the same, the Law is as before is said. *Murandis, &c.*

What if such a house be pulled down by
 fire, or by other men: If it be pulled
 down by negligence keeping of the
 house, in such case he is not bounden
 to make the same when it is builded again, for
 he shall recover damages for the same
 unto the value of the house, as it was
 at the time of the burning, or at the time of the
 pulling down thereof, so that the owner is
 bound to make another covering to the
 house, then he is to make unto another
 house burnt, or pulled down; for if he should
 be bounden, then the Lord should
 have double satisfaction for the same thing,
 &c. If such a house fall by the negligence
 of the Lord himselfe, or with his will, and
 he wills to be recompensed, whether and how the
 Lord shall be bounden to cover the same
 house, &c.

10 H. 7.

If a man be seised of the Manor of
 Dale, and a Stranger holdeth of him as
 of the Manor of Dale, to cover the same
 Manor, or other house: Or else
 of him as of the same Manor, to
 cover a ditch of the same Manor. Or if he
 be seised of him as of the same Manor by Knights
 service, or in socage: In such case, if before
 the Statute, &c. a Stranger be enfeoffed of the
 Manor, and the tenant accorn unto him, he
 shall be answerable for all such services: But for such
 services, viz. for the scotting of a ditch, or for
 the scotting of a house, without standing; but
 if he be seised of them, and he shall be answerable for them,
 and reservations be made, he shall not have an
 issue, because they lie only in fee simple, but
 he may have of them a *Præcipe quod faciat*, &c.

M. 2 E. 4.
16.

674 And if before the said Statute, Lord and Tenant have been of two acres of land by fealty and xii d. Rent, and the Tenant have enfeoffed a stranger, of one acre, or of a greater, or lesser part of the tenancy, it was at the liberty of the Lord in what parcel he would distress for the whole rent, for by such feoffment made unto a stranger, the rent was not apportionable by the common law, notwithstanding that the feoffee held of his feoffor. But now by the statute the feoffee shall hold pro particula illa of the Lord of the feoffor.

675 But if the Tenant leaseth parcel of the same for years, or for life, or giveth parcel of the tenancy in frank-marriage, or in tail. In that case the Lord paramount may distress for all his rent in every parcel of the tenancy; And the lessee, or donee, is put unto his remedy against his lessor, or donor, or him in the reversion. And the reason is, because such lessee or donee doth not hold of the Lord paramount, &c.

676 If there be Lord and Tenant by fealty and xii d. and the tenant at this day doth enfeoff a stranger of the moiety of the tenancy, in this case it seemeth unto some, that the rent shall not be apportioned, for these words, pro particula illa shall be intended where the feoffment is made of one acre of the tenancy in fealty, or of a greater or lesser part of the tenancy in fealty. Tamen quare.

T. 22 E. 4.
16.

677 And if there be lord and two joint tenants, and one of them alieneth that which belongeth unto him, It seemeth unto them that the rent shall not be apportioned: But coparceners make partition, the same shall

taken by equity, and that before the Statute, so that in that case the rent shall be apportioned. The same law is, if the Lord exchange parcel of the tenancy in fealty to the tenant. If the tenant doth enfeof the Lord of the moiety of the tenancy in fealty, the rent is not apportionable by this Statute, but it is apportionable by the common law, if the rent is febleable.

¶ And if before the Statute, the villein of the Lord had purchased parcel of the tenancy, and the Lord had entred, &c. Or if the Lord had purchased parcel of the tenancy by false oath, upon a false title, &c. the rent was apportionable at the common law, if it were febleable. And if after the Statute the cope-renters were of the tenancy, & they had made partition, the rent was apportionable, if it were a rent febleable.

¶ But by force of these words *pro particula illa*, a menalty shall not at this day be apportioned: as put case, there be Lord, two joynt seignies, & tenant, of one acre of land by fealty, and the Lord, and one granteth the tenant to belongeth unto him of the menalty in fee unto a stranger, and the tenant doth attorn unto the grantee, the menalty shall not be apportioned; for the words *pro particula illa*, are intended of the *ter-tend*, &c.

¶ And the said Statute, of *quia emptores terrarum* saith, *secundum quantitatem terrarum*, that shall be intended the value of the land, and not the quantity, for perhaps one acre is worth more then another acre by reason of a mine or otherwise, it shall be apportioned according to the value, &c. And if after the apportionment a house built upon the land fall downe, yet it shall be holden as it was apportioned, &c.

So is it if parcel of the land which is enclosed be surrounded by tempest. Quare, he be drowned by the Sea in such manner that cannot be regained by any means.

41. And if there be Lord and Tenant of two houses by fealty and two billings Rent, and the tenant after the Statute doth let out a stranger of one of the houses, and the rent is apportioned, and afterwards the house doth fall, or is burnt, yet the rent remaineth, and the Lord may receive for the same upon the land where the house stood, &c.

42. And perhaps a Rent shall be apportioned for a time. As in case, there be Lord and a woman tenant by Rent febrable; and the woman taketh a husband, and the husband doth discontinue parcel of the tenancy in fealty in fee, and the Rent is apportioned, and the husband dieth, and the wife doth re-continue this parcel, which was discontinued by her husband in a Cui in vita, brought against the Heir. How this apportionment is rehearsed, and determined, &c. The same Law is of a discontment of parcel of the tenancy made upon condition, &c. Mutuis mutandis, &c.

43. So shall it be, if parcel of the tenancy in fealty be recovered by erroneous process, or by false verdict, or upon a false title, &c. and afterwards it is re-continued, &c. The Statute saith that the Sheriff shall hold one of the Lord, and if it be of part, then for the part, sic decidat Capitali Domino ipsa pars vicis, &c.

44. If there be Lord and tenant of two acres of land by homage, fealty, suit of Court, &c. and the rent of a house payable

T. 9 E. 4.
21. per
Danby.

M. 22 E. 3.
36.

feast of Easter, or by the rent of a horse,
 of a horse, &c. And the Tenant after the
 lease doth enfranchise one man of one acre, part
 of the tenancy, and doth enfranchise another
 of another acre parcel of the tenancy, in
 case every of them shall hold of the Lord,
 by homage, fealty, and suit, but the Cstrage
 shall be apporportioned, and the relieve when it
 cometh as a Rent seuerable shall be apporportion
 ed; and the Lord shall have but one horse, or
 one horse, or one part of them all not apor
 tionable: And he shall make one abowyn up
 on them all, for such entire Rent, although
 the lands be seuerable, as he may make
 by the Common Law for such entire rent, an
 notwithstanding that by the said Statute
 the feoffor of parcel of the tenancy in fee
 simple, shall hold of the Lord Pro particula il
 lius: And before the Lord is bounden to abowyn up
 on him, he ought to give notice unto the Lord
 in right he holdeth of the Lord in me
 mory, and the Lord shall have Ward, or re
 vent, or a Cessavit, or assise of the rent before
 it be given unto him. But the Feoffor shall
 not have acquital before notice, &c. the notice
 ought to be given in this manner, viz. The
 Feoffor shall give notice unto the Lord, and if the
 rent be by homage, so tender unto him ho
 mage and fealty, and all the arrearages of the
 rent: Or otherwise the Lord is not bounden
 to give the notice, for the Feoffor shall not be
 charged before the arrearages paid: and the
 Feoffor of parcel ought to tender all the arrear
 ages. And if there be two joint Feoffors, it
 cometh to them to give their notice jointly. T. 47 E. 3.
 And if a Feoffor shall give notice; 4.

22 E. 3. 341

7 E. 4. 271
P. 4 E. 3. 22

T. 47 E. 3.

And an Infant who is Lord shall take notice
 &c.

685 And the husband who is seised of a
 feignory in the right of his wife (if the tenure
 be by homage) he and his wife jointly shall
 take the notice: But if the tenure be but by
 fealty and rent, the husband alone may take
 the notice: But if a singlewoman be enfeofed
 of parcel of the tenancy, and before notice
 she taketh a husband, in such case the husband
 and the wife ought to give the notice jointly.
 And an Abbot who is Feoffee of a tenancy
 shall give notice, &c. But he who hath the
 whole tenancy, or parcel of the same in febr-
 alty by matter of record, as by recovery, or by
 fine, shall not give notice &c. For the Lord is
 bound to take notice thereof, &c.

686 But if a fine be levied, Sur conusans de
 droit, of a tenancy, and the Conusor be in pos-
 session of the tenancy, it is at the liberty of the
 Lord, whom hee will take for his Tenant
 before the Conusee entreth, &c. But it is to be
 knowen, if at this day a tenure shall be made by
 void reservation, it behobeth that the reservation
 of the same thing, out of which the reservation
 is made, and of the estate which is made,
 remain in him which maketh the reservation,
 if not, that it be in special cases, &c.

32 E.3. 7.

687 And therefore if there be two joint
 tenants of land, to have and to hold the same
 land unto them, and unto the heires of one
 of them; and they join in a gift in tale
 unto a stranger, reserving rent unto him who
 had but an estate for life, this reservation is
 void to make a tenure. For notwithstanding
 that if the Donee in tale dieth without issue
 during

his life, and the life of his joynt Donor; that then he shall have the Land again; that both not prove that any reversion of the same land, after the gift made, remaineth in him who had but an estate for life at the time of the gift: For if at this day a man seise the land both enfeoffe thereof a stranger by indentured, reserving unto him, and unto his heirs, 10 s. Rent payable, &c. upon condition, That if the feoffor pay unto the feoffee 10 s. That then it shall be lawful unto the feoffor, and his heirs to re-enter. In this case the feoffor may have again the land, and the reservation is void as to make a tenement, &c.

But because it is by deed indentured, the feoffor shall have the rent reserved as a Rent-charge; and to this purpose it shall take effect in the feoffor as a Grantor of the feoffee, in so much as if it be reserved with clause of discharge, the feoffor shall have it as a rent-charge. It appeareth, that when two joynt-tenants of land give unto the heirs of one of them an estate in tattle, that nothing of the reversion of the same land doth remain in him who had but an estate for life, &c. And yet if the estate for life be of land, and he maketh a gift in tattle unto a stranger, reserving 31 E. 3: 14. that this reservation maketh a tenement betwixt him, and the Donor, &c. as long as the gift continues in force, because that by 14. A.D. 14. the gift he hath gained unto himselfe a reversion in the same land whereof the gift is made, &c.

But put case, If two or three joynt-tenants are of land, to have and to hold unto

C

the

the heirs of one of them, and they joyne in gift in tail without saying more, the Donor shall hold of them by the like services, as the land was held over. But if they have reserved new services unto them all upon such gift, quare, the same shall enure, &c.

690 If there be disseisor, and disseisee of any acre of land, and they both enter into the same acre, and deliver an estate thereof unto a stranger in tail, to hold of the Disseisor, by his heirs by homage, fealty, and escuage, this is a good tenure because the disseisor is the donor, and the reversion doth remain in him, because he was remitted before the liberty of the land made unto the Donee in tail, &c. But if they had given it in tail to hold of the disseisee, it is a void tenure, and then the Donee shall hold of the Disseisee by the like services as he held over. *Causa piter.*

691 If a man seised of one acre of land lease, lease the same unto a stranger for years, and the lessor and lessor joyne in a gift in tail unto a stranger, reserving 10 s. unto the lessor, the same is a good tenure. But if the lessor for life of one acre of land joyne in a gift in tail of the same acre, with his lessor unto a stranger by deed, containing words of confirmation, to hold of the lessor by 10 s. rent. *Quare thereof:* If Cestuy que vie of lands stretch upon the Feoffees, and lease the same land unto a stranger for life, according to the Statute of 1 R. 3. reserving 10 s. rent, the same is a void reservation to make a tenure for the reversion of the same land is not in the lessor, but it is in the Feoffees, and they give the land unto the lease, and the reservation

M. 7 H. 7. 5.

H. 8 H. 7. 5.

T. 15 H. 7.

25.

T. 27 H. 8.

43.

But if such lease, and reservation be by indentured, then the Lessor shall have the rent, as a rent-seck.

19: If Cestuy que use hath leased the Land to use for terme of years, reserving rent, &c. by word: In such case the Lessor shall not distrain for the rent reserved, because no reversion doth remain in him, &c. But it is said, that he may have an Action of debt for the rent against the Lessee, because it is but as a contract. As if a man selleth lands or tenements for money by word, he may have an action of debt for the money, &c. And it hath been holden, that in such case the Lessor shall have an action of debt for the Rent reserved, unless it be by deed indented; and the reason as it seemeth is, because it cannot be taken as a contract, because it is by reservation: And then if the Lessor take advantage thereof, it behobeth him to have it as a Rent-seck; and then it ought to take effect in the Lessor, as a grant of the Lessee; and rent cannot take effect in any person by way of grant by word, if not that it be in case of partition, and other special cases, &c. Tanien quare, in such leases are commonly made with reservations by Cestuy que use, by word,

20: If there be lessee for 20 years of lands or tenements, and he granteth the same lands or tenements unto a stranger for parcel of the years, reserving unto him 20 s. &c. In this case the Grantor shall distrain for the rent reserved, or have an action of debt at his pleasure; and the reason is, because by common judgment he is to have the same land, after

the years determined, because he hath granted unto him but parcel of the years, so as the remainder of the years are in him.

- P. 10 E. 4. 3. 694 If there be Disseisor, and Disseisee of one acre of land, and the Disseisee doth release all his right in the same acre unto the Disseisor, To have and to hold the same acre unto him, and his heirs of his body, reserving unto him, and his heirs 10 s. Rent payable, &c. it is a void reservation to make a tenure at this day; for notwithstanding, that such release doth go by way of making an estate, yet the fee of the land, which is in the Disseisor, shall not be divested out of him, by such release, if the release be not by deed indented; and this is the *Quære* thereof. For then it seemeth that the releasor shall have the reversion of the fee by conclusion. Yet if there be two joint Disseisors, and the Disseisee doth release unto one of them, he shall hold out his companions, &c.
- 7 E. 4. 25. 695 If there be Lord, and Tenant of land by fealty, and xii d. and the tenant leaseeth the tenancy unto a stranger for life, without any more saying. In this case the lessee shall hold of his lessor by fealty onely, and not by the services by which his lessor holdeth over: But if the lessor hath reserved any service, or Rent upon the lease, he shall have the same: But if at this day nothing be reserved upon a gift in tail, the Donee shall hold of the Donor by such services as he holdeth over. As if a man seised of Land in fee, leaseeth the same Land for life, reserving ten shillings, and the lessor giveth the same land unto a stranger in tail, and doth not reserve any thing upon the gift

in taile, quere, How the Donee shall hold the same, &c.

96 Now is to shew, what things may be reserved for to make a tenure. And as to that, know, that all such things as lie in feoffance, or in tenure, may be reserved for to make a tenure; for such things may be said Rents, or Services. As if before the Statute of *Quia Emptores terrarum*, a man leased of land do enfeoff thereof a stranger, To hold of him and his heirs to scoure the ditch of the feoffor, &c. Or to cover his Hall, or to repair his Kitchen, or to give unto the feoffor and his heirs when he shall come unto his Manor of Dale, a dinner; or to finde a Chaplain every Friday in the week yearly in his Manor of Dale, &c. Or to give unto the feoffor, a rent, or a horse, or herbs, or arrows, or a spear, or a lance, or a cup of silver, or a pair of spurs, or a ring of gold or silver, &c. Or a quarter of wheat, or of barley, &c. Of all the things aforesaid a tenure may be made by way of reservation: Or of all other things which be in feoffance or in render, a tenure may be made by reservation upon a feoffment, &c. And at this day a tenure may be by reservation of such things, upon a gift in taile, or upon a lease for life, &c.

97 And it is to know, that when the Law maketh the tenure or reservation, Then the parts of the feoffor, donor, or lessor, shall have the services as well as the feoffor, donor, or lessor himselfe shall have them: But if the reservation of the service, or rent, &c. be made by represser words of the party, &c. Then the parts of the feoffor, donor, or lessor, shall not have

M. 10 E. 4.
18.

the services, and Rent reserved, if not, then it be reserved unto them by expresse words, &c.

698 And therefore, if before the Statute of Quia emptores terrarum, There be Lord and Tenant of land and tenements by Knights service, and the tenant doth enfeof a stranger of the tenancy without reserving any thing, the Feoffee and his heirs shall hold of the Feoffor and his heirs by Knights service, if the Feoffor and his heirs hold over by the like services: But if the Feoffor himself holdeth over by Knights service, during his life, and no longer; and that after his death his heirs shall hold by fealty onely. or by other services. Now the Feoffee and his heirs shall hold of the Feoffor and his heirs by the like services; Mutatis mutandis, and so shall it be, if the tenant at this day doth give the tenancy in tail without reserving any thing, Mutatis mutandis, &c.

699 But if the feoffor, &c. or donor, &c. or lessor for life reserve unto him upon the feoffment before the said Statute: Or reserve unto him upon the gift, or lease, after the said Statute, Knights service, or fealty and 10 s. or 20 s. or 40 s. or 100 s. or more, or less, or annuall, or other service, or rent, or die: his heir shall have only fealty, because the reservation doth not extend unto the heir of the feoffor, donor, or lessor. But if, in the same case, the feoffor, donor, or lessor grant his seigniorie, or reversion, or inheritance, or other service, or rent, or annuall, or other service, or rent, or die: his heir shall have all the services, and the rent reserved, &c. during the life of the Grantor, &c.

16 Aff. p.
38.

P. 11 E. 3.
Aff. 86.

700 And if a man seised of two acres, let

the same unto a stranger for life, yielding for one acre, (and the weth which acre in) 10 s. unto the lessor, and his heirs, yielding for the other acre 10 s. sc. unto the lessor, and the lessor dieth, and the reversion of both acres do descend unto his heir, the heir shall not have the 10 s. last reserved unto the lessor &c.

901 And if a man seised of land after the statute of *Quia emptores terrarum*, giveth the same land unto a stranger, *Pro homagio & servicio suo*: To have and to hold the same acre to him, and his heirs of his body begotten: In this case the issue of the Donee shall do fealty onely unto the Donor, and his heirs; and the heirs of the Donor shall have onely the issue of the Donee, and his issues, &c.

902 And it is to know, That a reservation of things which lie only in prander or usage, make a tenure. And therefore, if a man seised of Land, and Wood, before the statute of *Quia emptores terrarum*, doth thereof give to a stranger, and after the said Statute give the same Land and Wood in tail, or to hold the same for life unto a stranger, reserving unto the Feoffor, Donor, or Lessor, a man for four Beasts in the same land, or to suffer the Feoffor, Donor, or Lessor to take yearly in the same Wood three load of Sheaves for fuel; this reservation is not to make any tenure; and the reason why these things cannot be said a reservation is, because that the Feoffor, Donor, or Lessor cannot take profit thereof, but onely by his own act, and a man cannot do service unto himselfe: And therefore such reservation is

hold, if it be not by deed indented, and then
shall take the same by way of grant of the
feoffee, donee, or lessee.

703 And therefore if a man seised of land
doth enfeoff a stranger thereof by deed inden-
ted, or giveth the same land in taile, or leaseth
the same for life unto a stranger by deed in-
dented, reserving common without number
unto him, and his heirs, this is a good grant
in fee-simple if it be reserved upon a feoffment.
But if it be reserved upon a gift in taile, then
it shall enure and take effect by way of grant
of the Donee, and shall be good and effectual
during the life of the Donee, and no longer,
etc. The same law is, if it be reserved upon a
lease for life by deed indented, etc.

704 And it is to know, that the donor, gran-
tor, or lessor, cannot reserve a lesser estate in
the same thing in which they depart withal by
the gift, etc. then they had in the same at the
time of the gift, etc. by matter in deed or writ-
ting. Quære, if it be by writing indented, etc.

H. 44 E.3.

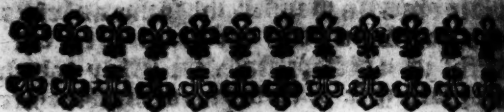
3.

705 But if such reservation be by fine, it
shall be good by way of conclusion, etc. And
therefore if a man seised of land in fee, giveth
the same land in fee, or giveth the land in taile
unto a stranger, or leaseth the same land unto
a stranger for life, the remainder thereof unto
the donor or lessor for life, or in taile, the re-
mainder over unto a stranger in fee: In this
case the remainder unto the donor, or lessor is
void, and yet the remainder over unto a stran-
ger is good, etc. The same Law shall be, if the
donor or lessor had not had but an estate for
years, or for life in the land given, or leased
etc. at the time of the gift or lease with the re-
mainder

under over, in manner any forme as before
said, for when lessee for years or for life,
maketh such a gift or lease &c. They which
by such gift or lease cannot disable their
donor or lessor to make such a gift, or lease
to them, and so it doth not lie in them, to
say that their donor, or lessor had not a fee at
the time of the gift or lease made, &c. But
notwithstanding such gift or lease made by
lessee for years, or for life, he or they who hath
the right may avoid the same by entry, or
eviction, as their case is, &c.

106 If husband and wife, and a third per-
son be joynt-tenants of land or tenements in
fee, and lease the same lands and tenements by
entire poll unto a stranger for life, saving the
reversion unto them three, and unto the heires
of the husband, notwithstanding that, the re-
version shall be unto them all three joyntly
&c. The same Law is of things which lie
in grant, Mutatis mutandis, if not that it be in
special cases: But if such reservations were
made by fine, they were good enough, if not,
but it be in special cases, &c.

CHAP.



CHAP. XI.

Conditions.

707



Now is to speak of Conditions.

And first, It is to know, That Conditions may be annexed unto things inheritables: as unto Free-holds, and unto Chattels real and personals: unto things inheritables and free-holds. As put case, a feoffment, or a gift in tail, or a lease for life, or the life of another, may be made of lands or tenements upon Condition: Or if a grant of a Rent, or Common, &c. be made in fee-tail, or for life, or for another's life upon condition, &c. unto Chattels real: As a man seised of land, leaseth the same land by indenture, unto a stranger for the terme of five years upon condition, that the lessee pay unto the lessor within the first years ten marks, that then he shall have the land for ever. *15 H. 3. 8.* fee in the land let, or otherwise but an estate for five years, and liberty of seisin is made according unto the deed: In this case, it has been holden, that the lessee hath a fee-simple conditional presently; which it cannot be because that the words of the Condition are

Verbo

de futuro, viz. That if he pay, &c. that he shall have fee.

And therefore if a man seised of land in fee, doth lease the same unto a stranger for years, upon condition, that if the lessee be out of the land within the terme by his lessor, then he shall have fee, &c. Now if the lessee within the terme be put out by a stranger, without the assent of the lessor, the lessor shall have an assise of this assise, and not the lessee; in such case, the free-hold did not accrue unto the lessee, but when the condition is performed, and at all times before the condition is performed, the free-hold doth remain in the lessor. And yet if a man seised of land, doth lease the same land unto a stranger for life, and doth grant the remainder over of the same unto the right heirs of I. S. which I. S. then alive, in that case, the fee is an abeyance, viz. in the consideration of the Law, is in no person certain; and the reason is in that case, because the remainder is granted by words in the present tence; and also in that case the free-hold is not to be put in abeyance; And in the principal case, if the free-hold and the fee, &c. should not be in the lessor, until the Condition be performed, then it would follow, that the heir of a Disseisor should put the Disseisor from his action; And all other persons who have right in lands or tenements, by such means, the tenant of the free-hold by his own act might put them from their actions: for the writ of Entry super, and such other actions ought to be brought and pursued against the tenant of the free-hold, &c.

9 H. 6. 29.

2 H. 7. 3.

T. 12 H. 7.

27.

709 But if a Parson of a Church be seised of Glebe-land in the right of his Parsonage, or Vicarage, unto which land a stranger hath right of action, and the Parson or Vicar die. In this case, during the time of the vacancy of the Church, he that hath right of action shall not use or follow his action, because during the vacancy the free-hold is in no person, &c. The same Law is, as it seemeth, if the Parson, or Vicar, doth resigne his Benefice into the hands of the Ordinary. In this case, during the time of the vacancy, he who hath right of action unto the Glebe-land cannot commence his action, &c. and yet the Church doth become void by the act of the Incumbent, &c. But that is a special case, and the same Law shall be of the like special case, &c.

H. 7 E. 3.
10.

710 If a man seised of land in fee, doth lease the same land by indenture unto a stranger, yielding s. l. by the yeare, and the indenture is, that if the Lessee will hold over ten years to him, and his heirs, that he shall pay 20 pound by the year, and libery of seisin made unto the lessee accordingly. In this case, for the rent behind within the ten yeares, the lessor shall have an action of debt, which lieth both that the free-hold, and the fee are not in the lessee before the ten yeares ended. But when the ten yeares be past, and ended, the lessee doth continue the possession of the land, and doth occupie the land by force of the indenture, then he hath fee, and shall pay s. l. by the year as a rent-seck.

M. 40 E. 3.
27.

711 But if a man seised of lands, doth lease the same lands for life, yielding unto him

for the first six years: and if he will hold
land over the six years, that he shall pay
marks by the year. In this case the les-
sor with the freehold presently, &c. And Bar-
on in Knights service may grant the ward-
ship of the body and land, or any of them, upon
condition. Tenant by Stat. merchant, and
tenant by Elegit may grant their Estates, or
part thereof upon condition, &c.

And Conditions may be annexed unto
things personals, And therefore if a man
sell 20 Oxen, or other chattels moveables,
or moveables upon condition, that if the
buyer goeth unto Rome within one year then
the following, that the Vendor shall pay un-
to him for the Oxen, or other chattels 20 l. or
otherwise that he shall pay unto him but 40 s.
for the Oxen, &c. this is good, &c. and the ven-
dor shall not have the 20 l. &c. if he doth not
perform the condition, &c. And a man may
sell goods upon condition, &c.

As if a man contract with a Physici-
an or with a Chyrurgion, that if he shall cure
a man, and name him certain, of such a
disease, & name the disease, that he shall have
the same is a good contract conditional.

A man selleth a house without the land, up-
on which the house it is built for 20 l. to be
paid when the vendor hath removed the house
to such a place at his own costs, and nameth
the place, &c. The vendor shall not have the
money before that he hath removed the house,
unless he bring unto the condition, &c.

And the retainer of a servant may be
upon condition, &c. And know, that M. Lit.
in his third book, Chapter of Estates,
hath

M. 44 E. 3.
28.

hath shewed, what Conditions ought to be
deed, and what may be without deed, &c. In
the same Chapter he hath shewed what
and many other good and necessary Cases
concerning Conditions, &c.

615 And it is to know, that Charters con-
cerning inheritances may be delivered upon
condition without deed, and yet they are
Chattels: The retainer of a servant con-
cerning unto the Statute of Labourers upon con-
dition is good without deed, &c. But a lease
cannot be granted for years upon condition
without an indenture, if the Grantor may
take advantage of the condition, &c. The
same law is of an Abbotson in gross, com-
mon in gross, and of things which cannot
passe without deed, &c.

M.6H.7.8. 616 It hath been holden, that if a man do
M.4H.4. 34. enfeof a stranger of land, and tenements,
re-enfeof him, and his heirs, and the first
dieth, and his heir doth require the land
M.7H.6.7. to re-enfeof him, and he refuseth, for what
T.44E.3. 22. the heir entereth, and the feoffee doth bring
an action of Trespasse, that the heir shall
recover his feoffment with the condition, with-
out shewing the deed thereof, because it is in
an action of trespass, in which action free-
hold is not to be recovered. But the law is contrary
at this day; for if in an action of trespass
for breaking of his close, &c. the defendant
pleads that the place where, &c. was his free-
hold at the time. Now if the Plaintiff will
compel him so to plead, by reason of the feoffment
of the Ancestor of the Defendant (whose heir
he is) with warranty, &c. and rely upon
the warranty, it behooveth him for to shew the
deed thereof.

of, notwithstanding that it be in an ad-
trespasse, &c. But in many cases, di-
persons unto whom a deed doth not ap-
tain, shall take advantage of a condition,
annexed unto the free-hold, and also of things
which lie in grant without shewing the deed: 3 H. 6. 21.
and therefore a woman may demand her 44 E. 3. 27.
of a Rent-charge, or of a common in
land which is certain, and without shewing
the deed thereof, &c.

17 Now is to shew at what time Conditions
ought to be annexed unto inheritances,
free-holds, or other things to avoid and defeat
the same. And as to that know, That when
a thing executed shall be defeated, and made
void by a condition, it behoveth that the condition
be annexed unto the same thing, at the time
of the executing thereof, otherwise as unto
purpose, it is not any thing worth. But
in otherwise of things executory, if not that
in special cases, &c.

18 And therefore if there be a Disseisor of 34 Aff. 1.
an acre of land, and the Disseisee doth re- 17 Aff. p. 2.
cover unto the Disseisor all his right by deed 43 Aff. p. 12
(as he ought) and afterwards it is covenant-
between them by Indenture, that if the
Disseisee payeth unto the Disseisor 4 l. before
the feast of Easter then next following, that
the release shall be void, and of no effect,
And the Disseisee doth pay the money ac-
cording to the Indenture, yet the release is
void, and effectual, and shall not be avoided
by covenant or condition, &c. because the
release taketh effect before the condition or co-
venant doth begin. But it seemeth that by the H. 17 E. 3.
payment of the money, &c. the Disseisor is 2,
seised

seised unto the use of the Disseisor, &c. Tamen
quare. But if such Indentures and Releases
had been first delibered as the deeds of the par-
ties simul & semel, then such condition or con-
venant is good to avoid the release. &c. And
so shall it be, if such condition had been contain-
ed within the release, if the release be by deed
indented. The same Law is of a release which
goeth, and doth enure by way of enlarging of
an estate, and of a release which doth enure by
way of extinguishment of a rent or common,
&c. or to determine a title of entry: And of
feoffments, gifts, grants, leases, confirma-
tions, &c. And of sales, contracts, bargains,
and retainers, &c. Mutatis mutandis: But o-
therwise it is of things executories, if not that
it be in special cases, &c.

719 And therefore if a man doth enfeoff a
stranger of certain land and tenements with
warranty, and afterwards the Feoffee doth
grant unto the Feoffor by deed, that if he be
impleaded of the same land, &c. that then he
will not vouch him by force of the same war-
ranty, this is a good grant, because the vouch-
er is executory.

7 H. 4. 43. 720 If I be disseised of one acre of land,
and my collateral Ancestor doth release unto
the Disseisor with warranty, and dieth with-
out issue, and the warranty doth descend upon
me, and afterwards the Disseisor doth grant
unto me by deed, that if he be impleaded, that
he will not help himselfe, nor take advantage
by way of plea of this release, nor of the war-
ranty contained therein, the same is a good
grant, because it is made of a thing executory,
&c.

11 And if a man seised of Lands and Tenements, doth lease the same lands, &c. unto a stranger for life, in this case the lessee is punishable for waste: But if the lessor after the lease by a deed doth grant unto the lessee, that he shall not be punished for waste, it is a good grant, because it is made of a thing executory: it appeareth how. The same law in all like cases, &c.

12 Now there are two manner of Conditions, that is to say, Conditions in Deed, and Conditions in Law, of which Mr. Littleton hath spoken in his third book, in the Chapter of Estates, &c. But it is to know, That there are three manner of Condition in Feoffment, 4 E. 4. 16. which are not good, viz. Conditions against the Law, Conditions repugnants, and Conditions impossible. And know, that of estates made upon Conditions against the Law, the estates are good, and the Conditions are void, H. 4. h. 7. 4; the estates do not commence by the Conditions, for then both are void, viz. the estates, and also the Conditions, if not that it be in special cases, &c.

13 And therefore if a man seised of Land and thereof enfeoff a stranger, &c. or thereof make a gift in tail, or maketh a lease thereof unto a stranger, upon condition, that the feoffor, donor, or lessor kill I. S. who is his enemy unto our Lord the King, that then the condition is void and the estate is good. The same law is of a rent, common, and other things which lie in grant, &c.

14 If a feoffment, gift, grant lease, or, &c. made upon condition, that if the feoffor, Donor;

Donor, or Grantor, or Lessor burn the houses of T. K. that it shall be lawful for him to re-enter, &c.

725 The same law is, if such condition be to be performed on the part of the Feoffee Donee, Grantee, or Lessee, &c. But if a lease for life, or years be made of land upon condition,

That if the Lessee kill I. S. within the terme, then he shall have and hold the land leased unto him, and his heirs for ever. Now notwithstanding that the lessee do kill I. S. within the terme, yet his estate is not enlarged thereby, because that the condition is against the Law, and the estate doth begin to be enlarged upon the performance of the condition.

H.4.h.7.4. But notwithstanding such condition, yet the lease is good, because the same doth not begin by the condition, &c. But if an obligation be enforced expressly with such a condition against the law, the Obligation and also the Condition are void.

726 As if a man be bounden that he will keep the Obligee without damage, and doth not shew in what thing, such a condition is void, because he may have damage by doing of treason, murder, or felony, &c. which are things against the Law, and also it is against the Law to keep a man from damage for such things, and so the condition is void. But the Obligation is not void, because that such things are not expressly rehearsed within the condition, and so it cannot be expressly said, that the will of the Obligee was, that the Obligee should save him harmlesse for such acts done against the Law.

727 And it is to know, That if a gift in

... be made of Land; &c. upon condition;
... the donee shall discontinue the same land;
... It is a void condition, because it is a-
... the Statute of West. 2. cap. 1. De donis
... conditionalibus. &c.

118 If a feoffment be made unto I. S. of
land upon condition that he shall enfeoff
thereof the Abbot of Westminster. the conditi- H. 46 E. 3;
is good, because that the Feoffee may per- 4.
come by leaue of the King, and of the Lord, H. 8 H. 6;
whom the land is holden. Notwithstand- 24;
ing that the condition is Prima facie against
the Statute of Mortmain, &c. And it is said
that if a gift in tail be made upon condition;
that the Donee may alien for the profit of his
heir, that this is a good condition, notwith-
standing that the Statute of West. 2. cap. 2.
De donis, &c. because that the Statute was
made unto the benefit of the issue of the Donee;
and this condition is for the benefit of the issue
in tail, &c.

119 If a lease for years be made upon con- 6 R. 2. 60th;
dition, that if the lessor do alien the reuerst- 1.
within the terme that the lessee shall have
it, and the lessor doth grant the reversion in
unto a stranger by fine, the lessee not have
upon this condition, for the free-hold; and
if the lessor is in the conscience lawful before the lessee
take it by the condition, Tamen quare, if
the lessor had granted the reversion unto a
stranger by fine for life, whether the Lessee
force of the condition shall have for, which
dependant upon the same estate for life;
and it seemeth to some that he shall have it,
because that when the Lessor hath granted the
reversion unto a stranger for life, he hath alie-

ned it. And it seemeth to some, that the lessee shall not have fee which is dependant upon the estate for life by such grant, for they say that the condition shall be intended of an alienation made of the whole reversion which was in the lessor, &c. Ideo quare.

730 But if the condition were, that if the lessor grant the reversion unto a stranger in fee, that then the lessor for years shall have fee, And the lessor granteth the reversion unto a stranger in fee by deed: In this case the lessee shall have fee by the condition: And the reason is, because that the reversion is not in the Grantee before attornment, and yet the lessor hath granted the same, and against this grant, he cannot plead, that he did not grant it by the deed. But if the lessee doth attorn unto the grant, then quare. If the lessee shall have fee by the condition, because he is the same person who should take advantage of the condition. But it seemeth unto some persons, that this attornment shall not take away his advantage by force of the condition, because that the fee is in him by the condition before his attornment, for the attornment cannot be so soon done, but that there shall be an instant between the grant, and the attornment, and immediately after that the Lessor hath granted the deed of grant of the reversion unto the Grantee as his deed, the fee is in the Lessee by force of the condition, which shall not be divested out of him by attornment, if not in case that it be by matter of conclusion, and the attornment is not any matter of conclusion as to him, &c. But alienare, idem est quod alienare facere: So that notwithstanding that the lessor

for hath granted the reversion by deed, yet
is not an alienation before attornment.
Causa patet, &c. And if the condition be, that
the lessee be ousted within the Terme by his M.21 H.7.
lessor, that then he shall have fee, if the lessor 21.
oust him within the Terme, he shall have fee.
But quere, if the condition be, that if the les-
see be put out by a stranger, &c.

73. And it is to know, what Conditions M.21 H.7.
are repugnants. As if a feoffment, or a gift 0.
in tail be made upon condition, that the feof- M.20 E.4.
ee, or donee shall not take the profit; Or up- 8.
on condition that he shall not do waste, or up-
on condition that the wife of the feoffee shall
not be endowed, these are void conditions, and
the estate is good. And if a lease for life be
made upon condition that the lessee shall not do
waste, it is a void condition. And if a man
who hath nothing in black acre, granteth un-
to me a rent-charge issuing out of black acre,
upon condition that by the grant, I shall not
charge his person, it is a void condition, and
repugnant, &c.

74. But in the same case, if the Grantor T.7 H.6.
at the time of the grant, had been seised of the 43.
same black acre in demesne, or in reversion,
and the condition had been good. If a lease for life
in land be made upon condition, that if the
lessee be impleaded of the same Land, that he
shall not bouch his lessor, It seemeth the same
to be a good condition, yet it is said it is not, be-
cause that the reversion in such case is the
of the boucher, &c. And if a man seised
of land in fee lease the same lands by inden-
tured for years, rendering rent, provided always
that the lessor shall not distrain for the Rent,

it is a good condition, because that he may have an action of debt for the rent, &c.

733 If I. S. seised of land, doth lease the same land unto T. K. for terme of life; rendering rent, &c. And T. K. being seised of other land, doth lease the same land unto I. S. for terme of life, upon condition, that if I. S. die strain for the rent reserved upon his lease, &c. 7 H. 6. 451
21 H. 6. 31. that then it shall be lawful for T. K. to re-enter into the same land which he leased unto I. S. this is a good condition, 31 H. 7. 11.

734 And if a man doth enfeof a stranger with warranty, provided that the Feoffee nor his heirs shall have nothing in value by force of the warranty, it is a good condition, because that notwithstanding that, the Feoffee may take advantage of this warranty by way of rebutter, &c. And if a gift in tail, or a lease for life, or a lease for years be made upon condition, That the donee, or lessee shall not grant their estates, nor any part of their estates unto any other person or persons, the same is a good condition, by reason of the reversion which remaineth in the donor, or lessor, &c.

735 Now is to speak of Conditions impossible; and as to that know, that an impossible condition is void: But if such a condition be in making of an estate, the estate shall remain good, but estates shall not be enlarged by Conditions impossibles. And if an Obligation be endorsed with a condition impossible, the Obligation is good, and the condition void. And therefore if a man seised of land in fee, doth thereof enfeof a stranger upon condition, that if the Feoffee doe not go out of

England unto the Church of S. Peter in Rome, and return again into England within three years next following the feoffment, that it shall be lawfull for the feoffor to re-enter, the condition is void, because it is impossible, and yet the estate is good, &c. 14 H. 8. 34.

736 But if a lease for life be made upon such condition, &c. that then the Lessee shall have fee in the Land, his estate cannot be enlarged by such a condition, because the estate both not begin to begin to be enlarged, but by the condition performed, and the same is impossible to be performed, &c. And if I. S. be bound unto T. K. in an obligatiō of 20 l. upon condition that if the Obligor go Ad terram sanctam out of England in one day next ensuing the date of the Obligation, and return the same day into England, &c. This Obligation is good, and the condition is void, Causa patet.

737 If a man be bound in an Obligation upon condition, to be performed in France, the condition is void. But if it can be tried, it is good enough, notwithstanding that it be performed in France, As in the time of War, divers things are done beyond the Seas which shall be tried by the certificate of the Marshal of the Kings host, &c.

738 If a lease for years be made of a wood w^{ch} is d^eed indented: and it is covenanted in the w^{ch}. That the lessee shall leave the wood in as good plight as it was at the time of the lease made, and during the terme the wood is destroyed by a sudden tempest: And at the end of the terme the lessor shall not have an action of Covenant for the not performing of this P. 14 H. 8. 32.

covenant, for it is not possible for the Lessee to perform the same : But if such a covenant be made upon the lease of a house, & the house be thrown down during the term, the Lessee after the end of the terme shall have an action of Covenant for the not performing of the covenant, *Causa patet* : But in such case the Lessee shall not be charged in an action of waste, &c.

739 And as to the words which of themselves make estates upon conditions, &c. In the making of feoffments in mortgage upon condition on the part of the feoffor, or on the part of the feoffee, and where the feoffor or feoffee ought to demand the money, &c. And where it behoveth him who ought to perform the condition, to seeke him to whom the condition ought to be performed : In what persons, and to what persons the condition ought to be performed, with divers other good and necessary matters appertaining unto conditions, Master Littleton who was an Honourable Sage of the Law, hath made a good and necessary declaration thereof in his Chapter of Estates upon Conditions, &c.

740 And it is to know, That if the words of a condition be, *Et pro solutione dist.* &c. that it shall be lawful for the Feoffor, and his heirs to take back the Tenements, and to make his profit of them, by these words the Feoffor, and his heirs may re-enter for non payment, &c. The same Law is, if the words of the condition be, *Et pro non solutione*, that the Feoffor, and his heirs may Recipere the lands, for they cannot be otherwise intended, notwithstanding

Notwithstanding that the word Recipere im-
plyeth a livery to be made of the Tenements,
Quare, if the words of the condition be,
that the Lessor and his heirs, Pro non solutio-
&c. may retain the lands, &c. how the words
of the condition shall be taken, whether accord-
ing to the intendment which the Law ma-
keth of the condition, or according to their
signification,

741 And therefore if I be enfeoffed of land
upon condition, that I shall give all my
goods (Si quæ fuerint) in this case this word
(fuerint) shall be taken in the present tense,
and not in the future tense, because by the
law it cannot be otherwise intended: For a
man cannot give goods in which he hath no
property. And if a man be enfeoffed upon
condition, that he shall give all the pikes in
the pond (si quæ fuerint) in this case (fuerint)
shall be taken in the present tense.

742 If a scoffment in fee be made upon con-
dition, that all the Doctors in Pauls (si quæ
fuerint) shall be at such a place such a day
(fuerint) shall be taken in the present tense.

And the common making of Charters is
in the perfect tense, viz. by Dedi & Concessi:

and yet they shall be taken in the Present
tense. If a man be enfeoffed upon condition
that he shall be Non-suit in all his Actions in
the Common Pleas (si quæ fuerint) (fuerint)

shall be taken in the Present tense: But if
a man be enfeoffed upon condition, that hee
shall give all his goods in London unto I. S.
(si quæ fuerint) in this case (fuerint) shall be
taken for the time past; For hee may have
goods which were in London, but now are not

57 H.6.16.

743 If a man be bound in 20 l. &c. that I. Et omnes alii si qui fuerint feoffati ad usum di. I. de manerio de B. relaxaver. totum jus suum quod habent, &c. Cuidam T. F. filio suo, & hered. dict. I. F. Et scriptum illud sigillo suo signatum ad P. T. ad usum dict. T. F. citra tale festum deheraver. quod tunc, &c. **Now this word** (Fuerint) shall be taken for the time past, and shall be intended that those who were his feoffee shall release, for it may be he had feoffed who were disseised, and yet they had right according to the words following, viz. totum jus quod habent, and the intent of the condition was, that the release should be good and profitable, &c.

744 If a man make a feoffment reserbitur, &c. and Pro non solutione, &c. that the feoffor and his heirs may re-enter. **Now by the words they shall re-enter**: for the word (ma) doth imply liberty in the parties to whom it doth extend: If the words be, that the feoffor and his heirs (possent) solvere, &c. and pro non solutione, &c. That it shall be lawful for the feoffor, and his heirs to re-enter; yet the feoffor and his heirs shall not re-enter Pro non solutione. Causa patet.

72 Aff. p. 5. 745 If a lease be made for life upon condition, that if the Lessor or his heirs pay unto B. or his heirs 10 l. at such a day, that it shall be lawful for the Lessor, and his heirs to re-enter, & if they do not pay it within the time and the Lessee pay unto the Lessor, or his heirs 10 l. at such a day, which is after the day of payment, which ought to be by the Lessor or his heirs, that then the Lessee shall hold and hold the land to him, and his heirs forever.

And the Lessor nor his heirs do not pay money, &c. nor doth the Lessee pay, &c. the Lessee shall hold the land during his time.

146 If a feoffment be made upon condition, M.14 H.8.
if the Feoffor pay 10 l. unto the Feoffee, 17.
and goeth unto Rome before such a day, that shall be lawful for the Feoffor, and his heirs to enter: If he pay the 10 l. before the day, he doth not go to Rome before the day, he shall not enter, because the condition is by the word (Et) which is a copulative; But otherwise it shall be, if the condition be by this word (vel) because that is in the disjunctive,

147 Now is to shew, how, and in what manner a condition in fait shall be performed, And as to that, there is a difference when a condition is to be performed to the party, and when it is to be performed unto a stranger, &c. When it is to be performed between parties, it is not requisite that the condition be performed in all things as is expressed, if the parties assent thereunto, &c. But if the condition be to be performed unto a stranger, it ought to be performed according to the words of the condition in all effectual points, if not, that it bee in speciall cases.

148 And therefore if I be bounden unto I. M.41 E.3.
in 10 l. to pay him 10 l. at a certain day, 20.
in a place certain: If I pay him the 10 l. H.43 E.3.
before the day, &c. and at another place, and 17 Ass.p.2.
the Obligee do accept thereof, the condition T.9 E.4.
is performed. But in the same case; If I 21.
pay unto the Obligee the 10 l. after the day of
payment,

2 E. 4. 3. payment, and the Obligee do accept thereof
 M. 19 E. 4. yet the condition is not performed. And
 I. when a man is bounden in a greater sum
 T. 9 E. 4. to pay a lesser sum at a place certain, the Obligee
 23. is not bounden to accept of the sum at another
 place then is appointed in the condition.
 M. 10 E. 4. But yet if he do accept of the same at another
 24. place, it is good, &c. If I. S. be bounden to
 M. 31 H. 6. pay 10 l. to T. K. to pay him 10 l. And T. K. is in
 11. debted unto a stranger in ten pound: And the
 H. 27. H. 6. other Obligor by the commandment of the
 10. Obligee payeth the 10 l. unto the Creditor
 H. 9. H. 7. the Obligee in allowance of the 10 l. com-
 18. pleted in the condition; the same is a good per-
 T. 12 E. 4. formance of the condition. And in the same
 3. case in an action of debt brought by the obligee
 against the Obligee, the Obligee may make
 his defence, and pray auditum, &c. and plead
 that he paid the 10 l. unto the Obligee, by the
 hands of the creditor of the Obligee, &c.

749 If a man be bounden in 100 l. to pay
 100 marks unto the Obligee, &c. and the Obligee
 accept of 10 l. of the Obligor in satisfaction
 of the 100 marks, it is a good performance
 of the condition, and yet some have said
 the contrary, because that 10 l. cannot be sa-
 tisfaction for 100 marks, &c. But that is ma-
 terial in his case, because the Obligor is
 content therewith, &c. And if the Obligee
 hath received a horse, or a gold or silver ring,
 or a quarter of wheat, or a cup, &c. of the Ob-
 ligor in satisfaction for 100 marks, it is a good
 performance of the condition; of what value
 soever the horse, or, &c. be. But if I. S. be
 bounden unto T. K. in two hundred pound
 H. 3. h. 7. 4. to enfeoff I. K. of the Manor of Dale, and the
 H. 9. h. 7. 8. Obligor

750 And both enfeof T. K. of the Manor of Dale, in allowance of the Manor of Dale, and accept thereof, yet the condition is not performed, because when the condition is to be performed of a thing not comprised within the Obligation, it ought to be performed of the same thing comprised in the condition, if that it be in special cases.

And therefore if a man be bounden in hundred marks to make a Recognisance of nine pound unto the Oblige in the Common Pleas at quindena St. Hill. before, And the Obligor doth pay 10 l. unto the Oblige for satisfaction of the condition, this is no performance of the condition, Tamen non, because some have said That the Recognisance is not to be made but for the assu- rance of 39 pound, the which 39 pound cannot be intended of a thing without the Obliga- tion.

751 But if the condition of the bond be, & the Obligor make a sure, sufficient, and lawful estate of and in 20 s. rent issuing out of his Manor of Dale unto the Obligee and his heirs, To have and perceive the same 20 s. rent him, and his heirs, with clause of distresse, at then, &c. And the Obligor doth grant unto the Oblige one annuity of 20 shillings in 6 years, that is no performance of the con- dition: The same Law is, if the Obligor had leased the Manor of Dale unto a stranger for 6 years, or for life, in allowance of the grant of 20 s. according to the condition of the Ob- ligation. And if a man be bounden unto I. S. 100 l. to grant unto him the rent and farm of such a Mill, &c. if the Rent bee granted unto

H.37.H.6;
26.

unto the Obligee to take effect in him by the
of retainer, the condition is performed. Ca
sa pater.

752 But if a man be bounden in 100 l.
make a Recognizance of 40 l. before such
wices, and nameth them, at a certain day,
and with the assent of the Obligee, the Obligo
goz doth lease a house unto him for the term
his life in satisfaction thereof, this is no per
formance of the condition.

753 If I be bounden in 20 l. sc. to deliv
ten quarters of wheat, or four Horses, or
H. 9 H. 7. Oxen, or forty Sheep, and I with the ass
18. of the Obligee pay unto him 5 l. in satisfacti
M.33 H.6. on thereof, the condition is not performed
24. Tamen quære, &c.

754 And it is to know, that if the Obligee
be party or privy unto any act done, by which
at the condition cannot be performed, then
the Obligoz shall be discharged of the Obli
gation, if not that it be in special cases. As
put case, I. S. is bounden in 100 l. to F. K. Ab
bot of Westminster, &c. to enfeof C. D. of the
Manor of Dale before such a day, &c. And
before the day C. D. is a Monk professed un
der the obedience of the same Abbot who is the
Obligee; in this case the Obligoz is dischar
ged of the Obligation: But Quære, if C. D.
81 Ass p.2. be deceased before the day the feoffment be to be
made, whether I. S. be bounden to enfeof him
or not. But if the condition be to be perform
ed unto a stranger, and it may lawfully and
possibly be done: And the Obligee be no party
nor privy to any act done, by which at the
condition ought to be performed, then such
condition ought to be performed in all things.

is, if not, that it be in special cases.

And therefore if I. S. be bounden unto
to l. to pay unto T. K. ten marks before
the day, at such a place, &c. And before the
the Obligor doth give unto T. K. a horse
satisfaction for the ten marks, and T. K.
accept thereof, yet the same is no per-
formance of the condition, for a stranger by
without my assent shall not take away
my, &c. The same Law is, if the Ob-
had paid the ten marks before the day, at
other place then is comprised in the condi-
Do shall it be, if there be a day appoint-
tain in which the payment ought to be,
I. K. do receive it at another day, &c.

And if a man be bounden unto I. S. 4 H. 7. 3.
to marry his daughter before such a day 33 H. 6. 18.
certain, notwithstanding the Obligor 20 E. 4. 2.
the day often tender unto the daughter 30 H. 6. 12.
marry her, and she refuse, so as the
Obligor cannot perform the condition, the
obligation is forfeited, because the condi-
is lawful, and possible to be done, and is
done unto a stranger, and the Obligor
not do any thing whereby it might not be
performed. The same Law is, if I be bound-
unto C. D. in 20 l. that T. shall enfeof I. S.
black acre before such a day certain, and T.
not enfeof I. S. before the day of black a-
I have forfeited my bond, because that by
condition I have taken upon me that such
payment shall be made.

And if I be bounden to T. D. in 10 l.
to Alice Stile of the Manor of Dale be-
the Feast of Easter, and before the condi-
performed, and before the day I marry
Alice

P. 2 E. 4132 758 But if I be bound in 20 l. unto T. K. to appear before the Justices of the Common Pleas Octabis Michaelis, to answer to such one in an action there brought against me, and at the day, I come into Court and appear, and the Plaintiff is essoined, so that he cannot answer unto him, in this case my bond is saved: But if I be bounden unto T. K. four l. to ride with I. C. such a day unto D. and I. C. will not ride that day, I have forfeited my bond, &c. But if I be bound unto

P. 2 E. 4. 2. 7. **8.** in ten pound unto the use of T. to enfeof
M. 8 E. 4. 2. 7. alone of the Manor of Dale, &c. And I do
that lieth in me for to enfeof him, and he will
not be enfeofed thereof, my bond is saved, Ca
sa pater.

759 If a man be bound in 20 l. unto I. S. K.
upon condition that the Oblige^r shall enfranchise
a stranger of the Manor of Dale before such a
day, &c. And the Oblige^r will not enfranchise the
stranger, &c. the bond is forfeited, notwithstanding
standing that he, viz. the Obligee is the true c
prediment that the condition cannot be performed
med because that the obligor took upon him to do
the words of the condition, that the Obligee
should so do. But if the words of the condition
tion had bene, if the Obligee do enfranchise the
stranger, &c. and the stranger doth require the
the Obligee for to enfranchise him, and he refuses
so to do, the Obligation is not forfeited.

160 If a man be taken upon a Capias, and
 giveth sureties by bond to appear Octabis
 Trin. And the Sheriff returneth the writ at
 the day, and the same day a writ of adjourn-
 ment is directed unto the Justices to adjourn
 the Court until Quindena Michaelis, and the
 Obligor cometh, and sheweth unto the Court,
 that he was bound for to appeare at the
 same day, and prayeth that they would record
 his appearance, and the Justices will not
 record his appearance, but bid him keep his
 day at Quindena Michaelis, the bond is not
 forfeited, in so much as if he appear at Quin-
 dena Michaelis, by this appearance he shall
 save his bond. And if in the same case the a-
 adjournment had been discontinued, by the devise of the
 plaintiff before Octab. Trin. and the Obligor had
 appeared, Octabis Trin. yet the bond had
 been forfeited.

M. 31 H. 6.

M. 38 H. 6.

161 But if I. S. be bounden unto T. K. that
 G. F. shall appear Octa. Sr. Trin. in the common
 pleas, in an action of debt brought by the said
 I. S. against the said G. F. returnable at the same
 day, and G. F. do appeare the same day, and
 his appearance is not recorded, The bond
 is forfeited. But in the same case G. F. dieth
 before Octabis Trin. the bond is saved, because
 the condition is become impossible by the act of
 God.

H. 15. h. 7.

T. 9 E. 4.

25.

162 And in the same case, in an action of
 debt brought upon the obligation, it is no plea
 for the Defendant to say that the writ was not
 returned, if so be that he that ought to appear
 required day by the Roll: But it is a good plea
 to say that he who was to appear was im-
 prisoned at Dale, within the County of Middlesex

31 H. 6.

60.

by T. 9 E. 4. 2.

by the Plaintiff, or at hys suit, before the day of the return of the Writ, and continued there in prison until the day of the return of the Writ was past, &c. And the reason is, because he himself is the cause that the condition cannot be performed.

763 If a single woman seised of land in fee, doth by deed indented thereof enfeof a stranger, reserving Rent unto her, and her heirs, the Rent payable yearly at the feast of Easter. Et si contingat redditum prædict. à retro fore in parte vel in toto non solvit, quod donque bene liceat, to the feoffor, and his heirs to re-enter, and the feoffor and the feoffee do enter-marry, and the marriage doth continue between them for divers years, &c. yet the condition is not broken, because that during the marriage between them, the rent is in suspense, and the cause of the suspension is, that the woman was a party to the same by her agreement, and during the time that the rent is in suspense, it ought not to be paid, &c.

764 But in the same case, if the feoffment had been made upon condition to pay 10 l. unto the woman who is the feoffor at the feast of Easter, &c. And afterwards the feoffor and the feoffee do enter-marry before the payment of the money, and before the day of payment, and during the marriage the day doth passe, the condition is performed, because that the money is but a sum in grosse, and a duty, so it shall be presently extinguished in the husband, because it is but a personal duty, in much, as if the woman had made a feoffment unto a stranger before the marriage upon a condition, and the husband during the marriage

riage and before the day of payment, release all manner of conditions, duties, and demands unto the feoffee: By this release the condition, and the duty is extinct; and determined. But if the husband releaseth all entries, and demands unto the feoffee after the day of payment, if the wife survive her husband, she may enter for the condition broken; notwithstanding her husbands release, and the reason is, because the condition was broken before the release, at what time the wife had title of entry into the lands, and Tenements; which title of entry may descend unto her heir, &c.

765 But if a single woman settled of land; dothereof enfeof a stranger by deed indented, upon condition that the feoffee shall enfeof the woman of black acre before the feast of Easter, &c. And before the feast of Easter, and before the condition be performed, the feoffor and the feoffee do enter-marry; and during the marriage, the day before which the condition ought to be performed passeth. Quære, whether the condition be performed or broken: and if the condition be broken, the husband is presently settled of the same Land, in the right of the wife, &c.

766 And if a man doth enfeof me by deed indented, upon condition that I shall pay un-
to him 10 l. at the feast of Easter. And the feoffor maketh me his Crecutor, & entereth into Religion; and is professed before the condition performed, and before the day wherein it ought to be performed and continueth in Religion untill the day be past, and afterwards he is deratigned; yet I shall keep the Land for ever, &c.

767 If a man be bounden unto me in 100 pound, to enfeof me of the Manor of Dale before such a day; and before the day the Obligor doth enter into Religion, and afterwards the Obligee doth enter into Religion, and the day doth come, and then both of us are de-raigned. It seemeth that the Obligation is forfeited, because there was a time for the Obligor to tender the money, and because the Obligor at the first hath disabled himselfe, and all times after, till the day before which the condition ought to be performed incurred, he remaineth to perform the condition and the condition is for his advantage, and he ought to do the first act, in so much as if the Obligor be not ready upon the Land, nor other for him to make the feoffment, and the Obligee doth not come thither, nor any for him, yet the bond is forfeited, for in such case, in an action of debt brought upon the Obligation, the issue shall be, whether the Obligor were ready upon the land, to make the feoffment, or not, &c.

768 And if a man be bounden unto me in 20 pound to pay unto me 12 l. at Pauls such a day, at which day the Obligor, nor any for him come thither, the Bond is forfeited, because the Obligor ought to do the first act, and therefore ought to be there ready, &c. For if in an Action of Debt brought upon the Obligation against the Obligor, &c. he sheweth the condition, and that he was ready at Pauls according to the condition, and that the Plaintiff, nor any for him was there to receive the money: The Plaintiff may say that he was there ready to receive the money, without

without that, that the Obligor was ready there to pay the same, &c. But if the Obligor be disabled to take according to the condition, it behobeth not the Obligor to tender the performance thereof unto him, if not that it be in special cases.

769 And therefore, if I be bounden unto a single woman in 100 l. upon condition that if I do marry her before such a day, that then, &c. And before the day the woman taketh a stranger to be her Husband, and the marriage between them doth continue untill the day be past: In that case I am not bounden for to tender the performance of the condition unto her, because she was not of ability for to receive the same, &c.

770 And if I be bounden in twenty pound upon condition, That if I do enfeoffe the Obligor of black acre before such a day, that then, &c. And before the condition performed, and before the day, &c. the Obligor doth enter in Religion, and is professed, and continueth professed untill he doth come. In this case it behobeth not that I be ready upon the Land to make the feoffment, &c.

771 If a man be bounden in 100 pound unto A. S. upon condition, that if the Obligor doth marry her before such a day, that then, &c. And before the day the Obligor, &c. is a Nun professed, and after, before the day, the Obligor is a Fryar professed, and then the day doth come the Obligor and the Obligor being both professed in Religion, and afterwards they are both deraigned, the obligation is not forfeited. The same law is, if they both are disabled at one and the same time, &c.

772 But know, That sometimes the first
 Act as unto the performance of the condition,
 ought to be done by the Oblige, otherwise the
 Obligor is not bounden to perform the condi-
 tion. As if a man be bounden unto me in 10
 l. That I. S. shall serve me in c. m. b. manda-
 tis licitis & honestis for a whole year certain.
 In this case, if I do not command I. S. to
 serve me, by reason whereof he doth not do
 me service, the Obligation is not forfeited.
 But if the condition were, that I. S. shall be
 a good and faithful servant unto the Oblige
 for a whole year certain: It behoveth that in
 this case I. S. tender his service unto the Ob-
 lige, notwithstanding that he doth not com-
 mand him any service, otherwise the Obliga-
 tion is forfeited. But if in such case I. S. ten-
 dereth his service unto the Oblige, and he re-
 fuseth to have any service from him, the Ob-
 ligation is not forfeited, &c.

§ F. 4. 1.

773 If a man be bounden in 10 l. unto I. S.
 upon condition, That if the Obligor goeth
 unto Rome with the Oblige at the request of
 the Oblige, That then, &c. In this case the
 Obligor is not bounden to go unto Rome with
 the Oblige, but at his request, &c. If one
 be bounden unto me in 20 l. That at what
 time soever that I shall come unto the Town
 of Dale, that it shall be lawful for me to en-
 ter into the house of the Obligor there, and if
 the Obligor do not suffer me to continue for
 three dayes, and three nights there, that the
 Obligation shall stand, or otherwise shall be
 void. Now if the Obligor see me coming un-
 to his house, shut up the doores, and goeth unto
 another place, so as I cannot enter, the Ob-
 ligation

M. 3 H. 4. 2.

tion is not forfeited, for in this case the obligee ought first to enter, &c.

774 If a Parson of a Church be bounden in 100 l. unto an Abbot, that if within a certain time he will resigne his Benefice for a pension as shall be agreed betwixt them, that he, &c. And they agree that the Parson shall have a pension of 4 pound. In this case it becometh the Abbot to tender to the Parson a sufficient deed of the pension, otherwise the Parson is not tied by this Obligation, and is not bound to resigne. And so in diverse cases the first act ought to be done by the Obligor. And sometimes the first act concerning the condition of an Obligation ought to be done by a stranger, &c.

775 And therefore if I be bounden unto I. 100 l. to stand to the arbitrement, and judgement, &c. of T. K. and D. C. and they give no award, the Obligation cannot be enforced, &c. And if a man be bounden unto I. 100 l. to make a sufficient and lawful estate by the advice of I. D. &c. If I. D. do not give any advice, and the Obligor doth not make any estate, &c. the Obligation is not enforced. And if I. D. doth give advice, and the Obligor doth make estate accordingly, the condition is performed, whether the estate be sufficient, or not, or lawful, or not, &c.

776 But if a man be bounden in 100 l. that he shall make unto the Obligee a sure, sufficient, and lawful estate in fee in certain years by a day certain. That then, &c. In this case the Estate ought to be sure, sufficient, and lawful, otherwise the Obligation is forfeited.

777 If a man be bounden in 100 l. to make as sure, &c. an estate unto the Oblige as he be devised by the Council learned in the Law of the Oblige, &c. In this case the Council of the Oblige are to advise the State, and notice thereof ought to be given unto the Obligor, otherwise he is not bounden to perform it, &c. And it is said, if in the same case, the obligee hath four men learned in the Law of his Council, and two of them give advice, and the other two give no advice, The obligor, in an Action of Debt brought against him upon the obligation may plead Quod Concilium of the Plaintiff non dedit advisamentum. For the advice in such Case ought to be given by all the Counsellors learned in the Laws, &c. As if the condition were, That the obligee, &c. make such estate as the Justices of the Bench shall advise, and there are four justices, and two of them give advice, and two give no advice, the obligor is not bounden by such advice. Tame quære.

778 But it is to know, That if a man be bounden in 100 pound unto l. S. to enfeof the obligee such a day of the Manor of Dale, &c. it behoveth the obligor in this case to be ready upon the Land, to make the feoffment at the last instance of the day appointed, &c. without any request made by the obligee. And in the same case the obligor needeth not give notice thereof unto the obligee, Caula pater.

779 But if a man be bounden unto me 20 l. to enfeof l. S. alone of the Manor of Dale before such a day, in this case the obligor ought to make the feoffment unto l. S. &c.

Conditions.

his peril, otherwise the Bond is forfeited :
 But if I do enfeoff l. s. upon condition, that
 he shall re-enfeoff me, in this case I ought to
 make request to the feoffee, otherwise the fe-
 offee is not tied to re-enfeoff me. But if the
 feoffment be made of certain Land upon con-
 dition, to enfeoff a stranger of the same land, ^{2 H. 7. 3.}
 it behoveth the feoffee in this case to make a ^{3 E. 4. 1.}
 tender of the feoffment unto the stranger to
 whom it is to be performed, &c.

780 And if a man grant unto me an annu-
 ity payable at a certain day, and no place is
 limited where it shall be paid, and the Gran-
 tor is bound unto me in 20 l. that he shall pay
 unto mee the annuity at every day that it
 ought to be paid ; it behoveth the grantor to seek
 in what place soever I am, if I be (In-
 maria quatuor Maria) to pay unto me the annui-
 ty, and that is to save the forfeiture of his
 obligation : For the Grantor was not boun-
 ded unto me to pay the annuity, by reason of
 the grant, without request, &c. But if the
 Obligor at the day in which, &c. tendereth
 unto me the annuity, and prayeth me to make
 an acquittance unto him, and I will not
 make acquittance unto him, by reason where-
 of he doth not pay unto me the annuity ; yet he
 is not forfeited his Obligation, &c.

781 And if a man be bounden unto me in
 20 pound to pay unto me a lesser sum at such a
 day, and doth not appoint any place where
 the payment shall be, The Obligor ought
 to seeke mee, &c. and to tender the lesser
 summe, according unto the Condition,

782 If a man be [bounden] in 20 pound to
 stand

19 H. 6. 36.

33 H. 6. 2.

7 E. 4. 3.

20 E. 4. 1.

22 E. 4. 25. &c.

stand unto the award of I. S. &c. and I. S. maketh an award which is void, yet the Obligor ought to perform the same for to save the forfeiture of this Bond, if the award be not impossible, or against the Law, as to kill a Man, or a Woman, or to burn Houses, or to steal Goods, or any such like thing, &c. But the Obligor is not chargeable in an action, upon an arbitrement, which is void: And in the same case, if I. S. hath awarded that the Obligor pay unto the Obligee 20 s. before the Feast of Easter, and the Obligor before the said Feast tendereth the 20 s. unto the Obligee, and he refuseth the same, and bringeth an action of debt against the Obligor upon the bond, &c. he may plead the condition, and the award, and say, that he tendered unto the Obligee the 20 s. accordingly, and that he refused the same, &c. without tendering the 20 s. in Court, because the Obligee might have an action of debt upon the arbitrement for the

78; If a man be bounden in 20 l. to pay 10 l. at a certain day, and the Obligor doth tender the money unto the Obligee accordingly, and he refuseth the same, yet in an action of debt brought upon the Obligation against the Obligor, it behoveth the Obligor to plead the condition, and the tender, and the refusal, and say, that he is yet ready to pay the 10 l. and tender the same in Court, because it was a duty before the Obligation, and the Obligor is not thereof clearly discharged by the Obligee, but he is bounden by the

obligation to pay the same upon a paine of forfeiture of a greater sum, and the Obligee cannot have an action to demand the same, but on the Obligation. The same Law is, notwithstanding the lesser sum were payable in place certain &c.

But the condition of the Obligation is not matter without the Obligation, &c. As to the Obligee, or to give unto him a horse, a Cow, a Hawk, a Knife, a pair of shoes, a Lance, or a Cap, &c. at a day certain, or any other thing which is not parcel of the duty comprised in the Obligation, if the Obligee doth refuse any such thing, &c. In action of Debt brought upon the Obligation, the Obligor shall plead the condition, at the tender and refusal; but shall not need to say, that he is yet ready, &c. But it is said also, That if the condition of the bond be a horse, which horse was due unto the Obligee before the bond made, by reason of some thereof made by the Obligor unto the Obligee, or other perhaps that the horse was delivered by the Obligee unto the Obligor for certain time, &c. Or by other means perhaps the horse is due to the obligee by the obligation, &c. Notwithstanding that in such case the Obligee doth refuse the horse, when it is delivered unto him, according unto the condition of the bond, so as by that the sum comprised in the condition of the bond is not forfeited, yet the Obligee shall have an action for the horse as the case is. But I conceive the law to be contrary, because the Obligee hath no action for the same horse, if not, that the horse was first delivered by a matter in writing, &c.

And

M. 8 E. 4. And the same Law is, of all other the like things, &c. Mutatis mutandis.

21.

785 If a man be bounden in ten l. to deliver unto the Obligee twenty quarters of wheat at a certain day, and it is not appointed in what place they shall be delivered, the Obligor is not bounden to carry the wheat with him unto every place, but it sufficeth him to say unto the Obligee, Sir, your wheat is ready for you, where you will have it to be brought unto you: And if the Obligee will not appoint unto the Obligor a place where the wheat shall be brought, the Bond is saved, &c. And if the Obligor at the day bring the wheat unto the house of the Obligee and say unto the obligee, Sir, I have brought unto you your wheat according to the condition of the bond, I pray you receive it, and he saith unto him, that he will not receive it there, but he will receive it at another place, and the Obligor will not carry the same unto the other place, Yet the bond is saved. For in an action of Debt brought against the Obligor upon the bond, he may plead the condition, and the special matter, and not tender the wheat in Court, &c. And it is to know, that if any thing be comprised in the condition of the bond, & it is not limited what person ought to do the same, when the Obligor or Obligee, viz. He who hath the most skill ought to do the same: But if neither the Obligor, nor the Obligee have knowledge to do the same, or either of them hath several skill, &c. Then it shall be done by the Obligor, if not that it is in special cases, because that the condition of the bond is for the advantage of the Obligee.

And therefore if a Taylo^r be bound
unto me, &c. upon condition, That if
bring unto his Shop three ells of Cloth,
which shall be cut out, and if the Taylo^r
give me a Gowne thereof, that then, &c.
if it is not appointed in the condition who
shall cut out the Gown, therefore it shall be
done, that he who hath most skill to do it
unto the same, which is the Obligo^r, &c.
if the Condition were, That if the
Giver bring three ells of Cloth unto
the Shop of the Obligo^r, which shall be
measured, and it is not appointed by whom
it shall be measured, then they shall be mea-
sured by the Obligo^r, Causa patet, &c.

Now is to shew at what time con-
ditions shall be performed, if no time be
appointed for the performance thereof: And
unto that, Know; That if the condi-
tion be to be done onely for the profit, and
not of a stranger, Then it behobeth that
it be done, and performed within con-
venient time, if not that it be in speciall

T. 15 E. 4.

23.

M. 33 H. 6.

54.

And therefore if a man be enfeoffed of
land, upon condition that he shall marry
the daughter of the Feoffor, and no time is
appointed when, nor within what time it
is to be done, the Feoffee ought to per-
form the same in convenient time, because
the Daughter of the Feoffor is to have
the land, and profit by the performance of the
condition, viz. Advancement, for it cannot
be intended that the feoffment was made unto
another intent, &c.

If a man be enfeoffed upon condition,
that

that the Feoffor shall enfeoff a stranger, it is
hoboth the Feoffor for to tender the feoffment
unto the stranger within convenient time,
But if a man be bounden in 10 l. unto
to pay 4 l. unto a stranger, and it is not
pointed when the 4 l. shall be paid: If the O
ligor pay it unto the stranger at any time
ring their lives, the bond is saved. And
reason is, because that the condition of
bond is for the benefit, and profit of the O
ligor. The same Law is, if the condition
the bond be, That the Obligor shall enfeoff
stranger of ac. and no time is appointed
the feoffment shall be made, ac.

M.21 H.6.

10.

P.4 H.7. 6.

790 And notwithstanding, that it be com
monly said, That the condition of an O
gation shall be alwayes taken for the bene
and advantage of the Obligor; Yet if a ma
be bounden upon condition, That if he be
Feoffees of his Manor of Dale, grant unto
Obligee 20 shillings Rent for the Terme
life issuing out of the same Manor, betw
such a day certain, That then, ac. And
Obligor hath three Feoffees of his Manor
Dale, and two of his Feoffees grant the
unto the Obligee; this is no performance
the condition: And yet the feoffees of the
ligor have granted the Rent: But by the
words (his Feoffees) shall be intended all
Feoffees, ac.

791 If a man be bounden, ac. upon con
tion, That if the Obligor sufficiently
that it was the will of C. D. that T. K.
make an estate unto the Obligor of
fee, ac. That then, ac. In this case, it is
for the benefit, and advantage of the O

make proof by witnesses before some honest men in the Countrey, and yet the proof ought to be made by an enquest, for the most sufficient proof in Law is by a Jury. And the condition doth not mention in what manner the proof shall be made, nor before what person but saith only that it shall be sufficient-ly proved. And therefore the Law shall say, That it shall be proved by the most sufficient proof, which is by Enquest: but if the words of the condition are, That he shall make the proof before such a one, &c. which are not Justices &c. Then the proof shall not be made by Jury. Or if the condition be, That if it be proved sufficiently before such a day, &c. before A. B. and C. D. Justices of our Sovereign Lord the King, and indeed they are Justices of Peace, or Quorum, and not Justices of the one Bench; or the other, nor Barons of the Exchequer, nor any such Justices which may make a trial by Jury, then the proof shall not be by Jury, if not, that the proof be to be made by indictment. And notwithstanding that the proof be to be of such thing as may be tried by Jury, yet if the proof be to be made at such a time, in which they have no power to take an Enquest, the trial shall not be made by Enquest, &c.

292 If a man be bounden unto T. K. upon condition, That if the Obligor doth acquit, and discharge the Obligor before the feast of Easter, &c. of an yearly Rent of 20 shillings unto R. with which Rent all the Lands of the Obligor are charged unto R. for the term of his life, That then, &c. Notwithstanding that the Obligor both pay the said Rent unto R. at

15 H. 6. 137

at every Terme it ought to be paid untill the
Feast of Easter be past, and requirerth an Ac-
quittance thereof made unto the Obliger by
the said R. in writing sealed, and the same is
delibered by R. unto the Obligee as the duty
of the said R. yet he hath forfeited the summe
of money comprised in the obligation, because
the condition shall be taken, That he ought to
discharge the Obligee of the said Rent, &c.
the right, viz. to determine the Rent for e-
ver, &c.

793 And it is to know, That if I do en-
feoff a stranger of Land upon condition, that
he shall re-infeoff me, and no time is limited
when the Feoffment shall be made, Then the
Feoffee ought to make the feoffment when he
44 E. 3. 7. is required, if the request be made at a lawful
time, &c. And it is said, That by such feoff-
ment without other condition, the Feoffee is
seised unto the use of the Feoffor, & his heirs
for by the condition the Feoffee is not to have
any profit, but the Feoffor is to have back the
Land by the condition, in as there is not any
condition by which the use may be altered
Tamen quere of the use But it appeareth
on the matter, that the feoffment nor the con-
dition is not made for the benefit of the Feoffee
&c.

794 But if the Feoffment be made upon
condition, that the Feoffee shall pay unto the
Feoffor ten pounds, and no time is limited
when the money shall be paid. In this case
the Feoffee may perform the condition at any
time during their lives, viz. during the life of
the Feoffor, and the Feoffee, for in this case
the Feoffee is seised of the Land unto his own

by the reason of this Condition, so he hath
benefit, and profit thereby, and the Feoffor
to have the 10 l. for the land, &c.

795 If lessee for 20 years of a house grant
his estate unto a stranger upon condition,
that he shall obtaine the good will of his Les-
sor, and the stranger openeth the matter
unto the Lessor, and the Lessor saith, that
he shall not have but the House which is
fallen, that hee, viz. the stranger shall
have the same, And after the stranger ob-
taineth the good will of the Lessor of his
Grantor, the condition is performed, not-
withstanding that the Grantee did not obtain
the good will of the lessor of his Grantor, in
three or four years after the Grant: for know-
the condition was unto the profit of the Gran-
tor: And it is not limited when it shall be,
and therefore it is sufficient for him to ob-
tain his good will of the lessor of his Gran-
tor within the Terme, and the words of the
Lessor of his Grantor unto the stranger shall
not change the Condition, for a Condition
cannot be broken nor determined, if not by
that done betwixt the parties, &c. if not in spe-
cial cases, &c.

796 And therefore if I doe enfeof I. S.
enfeof T. K. And I. S. say unto C. D.
that he will never enfeof T. K. By these
words the Condition is not broken. But if
I had said such words to T. K. the Condi-
tion had beene broken. And if R. M. be
bound unto H. S. in 20 pounds, upon con-
dition, That if T. A. be not content at his re-
turne from beyond the Seas, with the present-
ment which the said H. hath made to the said

M. 18 E. 4.

16.

H. 14 H. 8.

22.

H. 46 E. 3.

4.

R. to the Church C. in Dale, &c. And that he then resigne, That then, &c. T. cometh unto C. and disagrath unto the presentment, and saith that he will that one his Cousin shall have the same, and prayeth the said R. M. that he will resigne, and he refuseth. Now if afterwards the said R. M. cometh on to I. A. unto another place, and say unto him that he was presented unto the same Church, and demands of him that he acknowledge the same, and he say unto him that he is contented there-with, Yet notwithstanding this agreement after the disagreement, the Obligation is forfeited, Tamen quare. But if the Condition hath relation unto the Act precedent, and no time is limited when it shall be done, yet it ought to be done, when the precedent Act is done, if not, that it be in special Cases.

797 And therefore if I S. be bounden to twenty pound unto me upon condition, that if I do enfeof him of Black Bere, that then he will pay unto me ten pound, &c. In the case presently when I have enfeofed the Obligor of Black acre, he ought to pay unto me the ten pounds, notwithstanding that there be no time limited when it shall be paid.

798 And if I do enfeof a man of Land upon condition, That if I. K. give unto him ten pounds, or goeth unto Rome such a day &c. That then the Feoffee shall pay unto me ten pounds, &c. Now these ten pounds ought to be paid when I. K. hath given unto the Feoffee, or gone to Rome before the day limited, notwithstanding that no time be limited when it shall be paid, because it hath relation unto an Act precedent, &c.

799 If I. S. be bounden unto T. K. &c. upon condition, That if it happen, the goods which I. K. hath delivered to C. D. to be taken or purloined out of the possession of the same C. D. and then the said C. D. pay and satisfie unto the said T. K. for such goods so taken, That then the Obligation, &c. In this case the satisfaction for the goods ought to be made presently after the taking or purloining of them out of the possession of the said C. D. &c.

M.33 H.6.
52.

800 And it is to know, That there is a diversity when the condition is to be performed on the part of the Feoffor, or Grantor, &c. And when it is to be performed on the part of the Feoffee, or Grantee, &c. For when the condition is to be performed on the part of the Feoffor, or Grantor, it behoveth him that he be not disabled at the time to do or perform the same. Or if such Feoffor, &c. do any thing which shall turne the prejudice in the title, or of the profit or value of the Land, &c. The Feoffor may presently enter, or the Grant shall be presently determined, if the Condition be annexed unto the Grant, if not, that it be in special cases.

801 But when the condition is to be performed on the part of the Feoffee or Grantee, notwithstanding that they are disabled to perform the same at any time before the day, in which it ought to be performed, yet if they are able to perform the same at the day, it is sufficient, if not that it be in special cases. And therefore if I do enfeof a man upon condition, that he shall enfeof a stranger before a day certain, and the Feoffee be-

44 E. 3. 7.

fore the day is professed a Monk, I may enter presently into the land, and notwithstanding that the feoffee be de-raigned before the day, yet the Condition shall not be rebibed. The same law is, If the feoffor were single at the time of the feoffment, and before the day, and before the Condition performed he taketh a wife, &c. Or if he suffer a stranger for to disseise him, and taketh back an estate unto himselfe, and unto another: Or if he suffer the lands to be recovered against him, it is said that notwithstanding that Execution be not sued, The feoffor may enter, because in prejudice of the Title of the land, or if execution be sued forth by force of a judgement. Or if the Demandant doth enter into the land by force of the judgement, the feoffor may enter. Or if the feoffor be bounden in a Statute Merchant, or a Statute Staple, Or grant a Rent issuing out of the same land, the feoffor may enter. So shall it be in all like Cases. And as it is of feoffments upon Condition, so shall it be of leases, grants, &c. upon condition, Mutatis mutandis, &c.

3 H. 6. 50.

7 H. 4. 13.

802 But if a man doth enfeoff a stranger upon condition, that if the feoffor do enfeoff the feoffee of black Acre, or pay unto him ten pounds before such a day, &c. That then it shall be lawfull for the feoffor, and his heires to re-enter, &c. And afterwards the feoffor is a Monk professed, and is de-raigned before the day, and before the day he doth tender unto the feoffee a feoffment of black acre, and he refuseth the same, or tendereth to pay him the ten pounds, and he refuseth to ac-

cepe

cept thereof, the Feoffor may re-enter, &c. the same law is, of leases and grants, *Mutatis mutandis*, &c.

803 If a man grant Annuity unto another, untill he be advanced unto a Benefice, and the Grantee taketh a wife, the annuity is determined, because he hath disabled himselfe to take the Benefice: But if a man be bounden unto l. s. in twenty pounds, upon Condition, That if the Obligor do present the Obligee unto the Church of Dale, at the next time that the said Church shall become void, notwithstanding that l. s. taketh a Wife, and that the marriage doth continue betwixt them untill the time that the Church doth become void, yet if the Obligor will save his Obligation, he ought for to present l. s. to the same Church of Dale. H. 4. 16.

804 And it is to know, That when an annuity of ten marks is granted unto a man, untill he be promoted unto a Benefice by the Grantor, and it is not expressed of what value the Benefice shall be, the Benefice ought to bee of as great value, as the Annuity, or more, and it ought also to be of as sure Estate as the annuity, otherwise notwithstanding that the Grantee doth refuse it, the annuity is not determined. For if the Grantor doth tender unto the Grantee a Presentment unto a Benefice which is void, to which Benefice the Grantor hath no lawfull Title to present, notwithstanding that the Church be of as great value, or more then the annuity: And if the Benefice be such that the Grantor shall have cure of Soules, if the Grantee being within the age of

twenty four years, the Grantor tender unto him a presentment unto the same Church, the Grantee may refuse the same, notwithstanding that the Church be of sufficient value, and notwithstanding that the Grantor hath lawful title to present unto the same: And if no value of the Benefice be expressed, it shall always have relation to the value of the annuity, and not unto the person of the Grantee.

805 And therefore if I grant unto the Kings Chaplain an annuity of 40 Shillings, untill he be promoted by me unto a convenient Benefice, and I tender unto him a presentation unto a Vicarage worth ten marks by the yeate, and he refuseth the same, the annuity is determined, &c. But if the Grantor present the Grantee unto a convenient Benefice, upon other consideration then, to determine the annuity, and it is so expressed in a deed indented made betwixt them, and sealed and delivered as their deed, &c. Notwithstanding
 10 E. 3. that the Grantee doth accept of the present-
 Affise 157. ment, yet the annuity is not determined.

806 And it is to know, That the Grantee may accept of a presentation unto a Benefice conditionally, &c. if the Benefice be convenient, &c. And then he may presently, when he seeth, and perceiveth the same is not convenient, he may refuse the same: But if after he perceiveth that the Benefice is not convenient, he be admitted, he cannot now refuse the same before induction; but if he do not perceive the same before his induction, then he may refuse it for the same cause before his induction. And notwithstanding that the

Grantor

Grantē doth accept of the Benefice generally, yet the Annuity is not determined before he be inducted, if not that the cause of the procuring of his induction be in his own default, in so much as if the day of payment of the annuity be incurred before after his admission, and his induction, the Grantē shall have the same, &c.

807 And it is to know, That if I grant a Rent, or Annuity, or other thing, or do enfranchise a Stranger of Land, or do lease Land unto a Stranger upon condition, That if he purchase Lands or Tenements of the value of 10 pounds by the yeare, that then I shall re-enter into the Land: And if the Condition be annexed unto the Grant, then the grant shall be void and determined: And the Feoffee, Grantē, or Lessee, and a Stranger purchase jointly Land, or Rent of the value of 10 l. by the yeare, yet I may not enter, &c. For notwithstanding that every joint-tenant be seised of the whole, and through the whole, yet the same doth not prove, that the Feoffee, Grantē, or Lessee alone hath purchased land of the value of ten pounds: And the intent of the Condition was, That it shall be as much in value, viz. of the value of ten pounds unto the Feoffee, Grantē, or Lessee. But if the Feoffee, Grantē, or Lessee, hath purchased Land, or Rent, or Houses, or the reversion of the yearly value of ten pounds jointly with a Stranger, and the Stranger who is the joint purchaser with him doth release unto him all his right in the Land, Rent, or reversion so purchased, The condition is performed, so as that I may well enter. But if such Fe-

21 H. 6. 28.

Feoffe, Gantee, or Lessee alone purchaseth common of the value of 10 pounds, yet I cannot enter; for common is not comprised within the words of the condition, viz. within the words of lands and tenements, &c.

808 And if I. S. seised of Lands of the value of ten pounds, doth grant a Rent-charge of 40 Shillings out of the same land unto a stranger, and afterwards I. S. doth enfeoff such Feoffe, Gantee, or Lessee upon condition, the Condition is not performed: But if the Gantee of the Rent doth release all his right in the lands where-out the Rent is issuing, unto the Feoffe, Gantee, or Lessee upon Condition, then being seised of the land by force of the feoffment of I. S. the Condition is performed, &c. The same law is, if the Rent were first granted to such Feoffe, Gantee, or lessee upon Condition, and afterwards such Feoffee, Gantee, or lessee upon Condition, had purchased the land where-out the Rent was issuing, for then he hath lands and tenements of the same value, &c.

809 And if a man seised of land of the value of ten pounds, granteth Common of Pasture for twenty Oxen in the same land unto a stranger, and afterwards doth thereof enfeoff the Feoffe, Gantee, or Lessee upon condition, now the condition is not performed for land or other thing, *Tantum valet quantum vendi potest*. And this Land cannot be sold by the Feoffee unto the value of ten pounds; for if a man sueth forth an Execution upon a Statute Merchant of the same Land against the Feoffe, he hath judgement to recover

other in value against him, by reason of
 which, this land shall be extended, and the
 common shall be recouped, and deducted,

110 But if I be bounden unto I. S. in an
 hundred pounds to enfeof him of the Manor
 of Dale before such a day, and after the deliv-
 ery of the Bond as the Deed of the Oblig-
 ment. The Obligor doth grant a Rent-charge
 of four pounds issuing out of the Manor of
 Dale, and afterwards doth thereof enfeof the
 Obligee before the day, the Condition is per-
 formed: But if he had tendered a feoffment
 of the moiety, or of the third part of the Manor
 unto the Obligee before the day, &c. the Ob-
 ligor might well refuse the same, and bring
 an action of debt upon the Obligation, Causa
 non, &c.

111 And if a man be bounden for to appro-
 priate a Church at his own costs, and before
 the Appropriation a pension is granted out
 of the same, and afterwards before the day he
 hath appropriated the same, the condition is
 performed, &c. If a man seised of land doth
 thereof enfeof a stranger upon condition, that
 he, viz. the feoffee doth marry a wife seised of
 land of the value of ten pounds, That then the
 feoffor shall re-enter. And a single woman
 seised of land, of the value of 20 pounds, doth
 grant a Rent-charge of five pounds issuing
 out of the same lands unto the Feoffee; And
 afterwards the feoffee, and shee doe enter-
 marry, Quære, if the Condition be perfor-
 med, for the land was not of the value of
 20 pounds, till after the inter-marriage,

812. If a man seised of Land doth thereof
 enfeof a stranger upon condition, That if he
 purchase Land of the value of twenty pounds,
 that then the Feoffor shall re-enter: And af-
 terwards the Feoffee doth recouer Lands of
 that value in an action auncestrel, or possessio-
 22, the cause of which action was given unto
 him after the feoffment upon condition, or be-
 fore the feoffment upon condition, the conditi-
 on is not performed. Quære, if the recovery
 be upon a false title. But if the feoffee after
 the feoffment doth disseise a stranger of Land
 of the value of 20 pounds, the condition is
 performed, notwithstanding that the Dissei-
 se do re-enter into the same Land, or doth re-
 couer the same in an assise, &c.

813. If such Feoffment upon condition be im-
 pleaded of the Land of the value of 20 pounds
 of which he was seised at the time of the feoff-
 ment, and he voucheth a stranger by force of
 a warranty made upon him before the feoff-
 ment, and the Vouchee doth enter into the
 warranty and loseth, &c. And the Demander
 hath judgement for to recouer again
 the Tenant, and the Tenant hath judgement
 to recouer over in value against the Vouchee
 and each of them hath execution against the o-
 ther. Now it seemeth the condition is per-
 formed, for notwithstanding that the war-
 ranty was before the feoffment upon condition
 yet the title for to recouer in value shall
 have relation, but unto the Vouchee, and
 is in the Land recovered in value by the Vou-
 chee, in so much as the Vouchee hath the land
 recovered in value by disseisin, the Dissei-
 se shall have thereof a writ of Enece sur dissein

en le per against him who recouereth them in value, &c.

814 Know, that some have said, when the condition cometh from the Feoffor, and the feoffee hath done as much as lieth in him, for to perform the condition, so y there is no default in him, that it is not reason y he should lose y land. And therefore they say, that if I. S. be seised of Land in fee, and doth thereof enfeoff T. K. upon condition y he shall pay unto C. 20 pounds before such a day, &c. and he doth tender to him the money accordingly, and he refuseth the same, They say that I. K. shall be sold the Land unto him, and his heirs for ever; because the condition cometh from the feoffor, and no default is in the feoffee, &c. And it is not reason, that by the negligence of a stranger the feoffee should lose the Land where he doth not take upon him to make the stranger to receive the money; and it is the folly of the feoffor to make the feoffment upon such condition, if not that he well knew that the stranger would receive the money. And they say, that the same Law is, if a man seised of Land doth thereof enfeoff I. S. upon condition, that he shall enfeoff T. K. for a certain sum of money, and expend the same money for the purchase of the feoffor. And I. S. doth offer unto T. K. a feoffment of the same Land for the same sum of money, and he refuseth the same, they say that the feoffor nor his heirs shall not suffer, but that the feoffee should hold the Land to him, and his heirs for ever.

And also they say, That if I do enfeoff I. S. of Land upon condition, that he shall enfeoff T. K. and I tender a deed of the feoffment

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M. 19 H. 6.

24.

P. 2 H 4. 2.

feoffment unto T. K. and he doth refuse the same, that neither I nor my heirs shall enter but that the feoffee and his heirs shall hold the Land for ever. And they say, that these Cases are not like unto this Case, viz. where I baile my Goods unto I. S. to baile over unto T. K. and I. S. doth tender the goods unto T. K. and he refuseth to have them. In this case I shall have my goods again, because the property of them was never out of me and the property thereof was at no time in I. S. But in the Cases before of Feoffment it is otherwise: And also they are not like unto the Case, where a man is bounden for forty pounds that he shall enfeoff T. K. a Black Acre at a day certain. And the Obligor doth tender the feoffment according unto the condition of the Bond unto T. K. and he refuseth the same, The Obligor hath forfeited his Bond, because he took upon himself for to enfeoff T. K. And the Obligor is bounden for to do it at his perill, &c. But notwithstanding all these reasons, The Law is contrary in the Cases before of Feoffment because that it appeareth by the words of the condition, that the intent of the condition is not. That the Feoffee shall hold the Land unto him and his heirs for ever, if the condition be not performed, and the condition is not against the Law, nor repugnant unto the Law, nor impossible: And therefore if it be not performed, the Feoffor and his heirs may enter. And sundry Cases are put before concerning this matter, to prove the same in diverse places of this Treatise of Conditions.

816 But if I be seised of Land, and do thereof enfeoff a stranger, upon condition, that before such a day he shall give the Land unto a stranger in taile, and before the day the feoffee doth tender a gift in taile of the same land unto the stranger, and he refuseth the same, In this Case, the feoffee shall kepe the Land unto him, and his heirs forever, because that the intent of the condition according unto the words of the condition, cannot be otherwise taken, for notwithstanding that the gift in taile had been made according to the condition, yet the reversion of the same Land doth remain in the feoffee, and his heirs, which reversion should be ousted out of the feoffee and his heirs, if the feoffor should enter into the Land, and therefore the feoffee shall hold the Land to him and his heirs forever, &c.

817 And it is to know, That if a man be seised of Land, and doth thereof enfeoff a stranger, upon condition, That the feoffee shall give the same Land unto the feoffor for his life in special taile, the remainder unto the right heirs of the feoffor, and the feoffee dieth without issue by his wife, and his wife not with childe, and the wife doth marry another husband, and the feoffee doth give the land unto the second husband, and his wife, for the life of the wife without impeachment of waste, the remainder thereof unto the right heirs of the feoffor; In this Case the condition is performed, and yet the reversion is not made according to the words of the condition, &c.

818 And know, That Land, Rent, or Common, &c. unto which a condition in Fee is annexed during the estate unto which the condition is annexed in possession, or in right is chargeable with the condition, in whose hands soever the Land, Rent, or Common shall come, if it come not unto our Sovereign Lord the King, of which I will not speak, or otherwise if it be in special cases, And therefore if I be seised of Land in fee, and thereof enfeoff l. s. upon condition; and the feoffee is disseised, and the Disseisor thereof dieth seised, and his heir is in the Land, by descent, in whose time the condition is broken; I may enter for the condition broken. And in the same Case, it is said, That I may enter upon the heir of the Disseisor for the condition broken, before the disseisin, notwithstanding the descent. And others think the contrary, because that then my title of entry is before the descent, which title of entry shall be bound by the descent. Quære, for if the condition be broken (the Land being in the possession of the feoffee) and afterwards the feoffee thereof doth die seised, yet the feoffee may enter upon him for the condition broken before the descent, &c.

22 Ass. p.
49.

819 If there be Lord and Tenant, and the Tenant doth enfeoff a stranger upon condition, and the feoffee dieth without heir, or is attainted of felony, or murder, or petty treason, &c. So as the Tenancy doth come unto the Lord by escheat; yet the Tenancy doth remain charged with the condition. But if a man seised of land doth lease the same land for life upon condition, and afterwards doth

grant

grant the reversion unto a stranger upon condition, and the Lessee doth attorn, and afterwards dieth, and the Grantor of the reversion doth enter into the Land, he shall hold the Land without any condition, because that the estate unto which the condition is annexed is determined in possession, and also in right. And if one doth disseise the feoffee of the Land, or the heir of the Disseisor, or any other person who hath the Land, by unjust title, and doth thereof enfeoff a stranger upon condition, and the Land is afterwards lawfully debedded out of the possession of the feoffee, &c. by him who hath right according to his title, by entry or by action, as the case shall require, the Land is discharged of the condition, &c.

§ 20 But if a man seised of Land in fee, 8 H. 7. 9. doth lease the same land unto a stranger for 20 E. 4. 18. years, and one who hath no right unto the Land doth put out the Lessee, and dieth thereof seized, and his heir is in the land by descent, and the heir doth enfeoff a stranger of the same land upon condition, upon whom the Lessee for years swithin the terme doth enter, claiming his terme. The Lessee shall hold the land during all the terme discharged of the condition, and yet the estate of the Feoffee upon condition is not altogether determined in possession, for notwithstanding the entry of the Lessee for years, the possession of the freehold of the same land doth remain in the Feoffee upon condition, &c.

§ 21 If I be seised of land in fee, and do enfeoff a stranger thereof upon condition, and the Feoffee doth enfeoff I. S. of the same land upon

upon condition, the condition which was annexed unto the first feoffment is broken, for which if the first feoffor entereth, and re-feoffeth I. S. without any condition, I. S. shall hold the Land discharged of the condition, &c. *Causa patet, &c.*

822 And it is to know, That if a man seized of land in fee doth take a Wife, and during the Marriage doth thereof enfeoff a stranger upon condition, and the Husband dieth, and the feoffee doth endow the Wife of the feoffor of a third part of the land, &c. this third part is discharged of the condition. And if the woman do grant her estate unto the feoffee whp is in reversion, the condition is presently revived, because that this Grant doth enure by way of surrender: Yet if the Woman had granted a rent-charge issuing out of the same Land, and afterwards had granted her estate unto the feoffee in the reversion, the feoffee should hold the same charged during the life of the woman tenant in dower. See divers cases concerning this matter in the Chapters of Grants and Surrenders. *Mutatis mutandis, &c.*

823 If feoffee upon condition be of land, and he doth lease the same land unto a stranger for life, and the feoffor doth release all conditions, and all demands which he hath unto the same land unto him in the reversion; By this release the free-hold is discharged of the condition: And if the feoffor had released all conditions, which he had in the same lands unto the lessor for life; by such release, the reversion is discharged of the condition.

4H. 7. 6. 824 But if I. S. be Collector of my Rents of

of others houses, and he be bounden unto me in a hundred pound, that he shall reeld unto me a just accompt, and that within forty days next after the accompt, that he shall pay all that which he is found in arrerage; and afterwards before any accompt, I do discharge the Obligor of the collecting of the rent of one house, this is no discharge for the rest, but he ought to collect the Rents of the residue of the houses, and render accompt thereof, &c. otherwise he doth forfeit his Bond, for that the discharge is for his advantage, &c. If there be Lord and Tenant by fealty, and by the service to plow a hundred acres of land, and the Lord doth discharge him of the plowing of 20 acres of the same land, this doth not discharge him from plowing of the residue of the hundred acres, for this discharge is for the advantage of the Tenant; and the service is not so an entire service, but that it may be severed, &c.

825 But if I be seised of ten acres of land in fee, and I do lease the same land unto a stranger for life, or for years, reserving ten shillings rent unto me, &c. the Rent payable yearly at the Feast of Easter: and the Lessee doth binde himselfe unto me in a Bond of 100 pound to pay the Rent reserved upon the lease justly according to Law, and before any day of payment I do put the Lessee out of part of the Land, and the Lessee doth occupie the residue of the Land for the whole yeare, and will not pay any Rent, yet the bond is not forfeited; for by this putting out of the Lessee of parcel of the land, the whole Rent is put in suspence: But if one day of payment

P.45 E.3.3

M.44 E.3.

37.

ment be incurred before the Easter, then the Lessor ought to pay the same, otherwise he hath forfeited his bond: But if I do put the Lessee before the Feast of Easter, out of one acre of the land, parcel of the land leased, and do occupy the same untill the feast of Easter, and then the Lessee doth re-enter, and doth occupy the land untill the next feast of Easter, and doth not pay me any Rent for this latter feast, the bond is forfeited, I amen quare.

22 H.6.ac.

826 And if a stranger who hath not any right, doth put out the Lessee for yeares of the same land before any day of payment, and keepeth possession thereof untill the day of payment be past: Yet the Lessor ought to pay me the Rent at the day whereon it ought to be paid, otherwise he hath forfeited his bond. Causa pater.

827 But if a Disseisor doth lease Land which he hath by disseisin for terme of life, or for yeares, reserving Rent, payable yearly at the feast of Easter, and the Lessor doth binde himselfe in ten pound to pay the Rent unto the Lessor justly, and the Disseisor doth put out the Lessee before any day of payment, and afterwards the day of payment doth come, and the Lessee doth not pay the Rent at the day the bond is not forfeited, for he hath no remedy against the the Disseisor, because he had a right to enter: But if a day of payment be incurred before the disseisin, it behoveth the Lessee to pay the rent at the day, otherwise he forfeiteth his bond, &c.

P.9 E.4.1.

M.12 H.8.

3.

828 If three Coperceners be seised of a Manor, and one of them in her own name, and without the agreement of the other Coperceners

Coopers doth lease the whole Manor unto
I. S. for four yeares, yielding five pounds
yearly at the Feast of Easter unto the Lessor,
and her heirs, and I. S. doth binde himselfe
in forty pounds unto his Lessor, to pay the
Rent reserved, &c. And before any day of
payment the two other Coopers which
did not make the lease, do put out the lessee
out of the whole Manor, and keep the posses-
sion untill the day of payment of the Rent be
incurred: yet it behobeth the Lessee to pay the
third part of the Rent reserved to his Lessor,
otherwise he hath forfeited his bond, for the
two Coopers who did put him out have
not right but to two parts of the Manor,
&c.

829 If a man be seised of two acres of land
in fee, and do enfeof I. S. of one of them by
deed with warranty and I. S. is impleaded
of the same acre by a stranger, and I. S. doth
touch his feoffor to warranty, &c. and after
the summon ad warrantizandum, &c. awarded,
and before the day of the return, his feoffor
being seised of another acre of land, doth
thereof enfeof a stranger upon condition, and
at the day of summons ad warrantizandum, re-
turned, the feoffor doth appear, and entereth
into the warranty, and pleads, and the De-
mandant hath judgement for to recover a-
gainst the Tenant, and the Tenant hath
judgement to recover over in value against the
Mouchee, and the Demandant doth enter
into the land in demand by force of the judge-
ment, and the Tenant by way of suit (as
he ought) hath execution against the feoffor
upon condition of the same acre whereof he

was enclosed by the *Moucher Mesne*, between the awarding of the summons ad warrantizandum, and the day of the return of the same writ, the Tenant, viz. l. s. shall hold this acre discharged of the condition, because he is in the same acre by a title before the seoffment upon condition for his title untill this acre doth begin by the *Moucher*, which was before the seoffment upon condition, &c. And as it is said of Land, so shall it be of a Rent, or Common, and of other things which lie in grant, Mutati mutandis, &c.

830 Now is to shew, what persons shall take advantage of conditions when they are executory, and what persons shall take advantage of conditions when they are executed. And know, That no manner of persons shall take advantage of conditions executory, if they be not parties or priories, &c. And not all manner of priories, for priories in estates shall not take advantage of conditions Executoryes, &c.

831 And therefore, if a man seised of one acre of land, doth lease the same acre for life, upon condition that the lessee shall pay twenty shillings at a day certain, the remainder of the same of land unto l. s. in fee, l. s. shall not take advantage of this condition by way of entry, and yet he is priory in estate, for his estate and the estate of the Lessee were made at one and the same time, &c. For priories in Fee shall not take advantage of Conditions executories? And therefore, if a man seised of land, doth lease the same land for life upon condition, &c. and afterwards doth grant the reversion unto a stranger in fee, and the

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doth attorne, yet the Grantee shall not
take advantage of this condition by way of
entry, notwithstanding that he be priby in
fact, and he is said priby in fact, because he
hath the reversion by grant, &c. Nor pribies
in law shall not take advantage of conditi-
ons Executors.

§ 2 And therefore, if there be Lord and
Tenant, and the Tenant doth lease the te-
nancy for life unto a stranger, upon conditi-
on, and afterwards the Tenant dieth with-
out heir, and the reversion doth escheat unto
the Lord, the Lord shall not take advantage
of the condition by way of entry: And the
tenant in this case is said priby in law, be-
cause he hath his estate in the reversion by the
law only, viz. by escheat. But pribies in
fact shall take advantage of conditions Ex-
ecutors, &c.

§ 3 And therefore, if lessee for yeares be of
age, and he granteth his estate unto a stran-
ger upon condition, &c, and maketh his Exe-
cutors, and dieth, in this case, his Executors
shall take advantage of this condition by way
of entry, for they are pribies in right; for
the condition be broken, and they do enter
into the land, &c, they shall have the same in
right of the Testator unto the use of his
heirs, &c.

§ 4 If a man seised of land for the terme
of twenty yeares in the right of his wife, doth
grant the same land unto a stranger for ten
yeares, rendering Rent, &c, and for default of
payment, a re-entry, and afterwards the
land dieth, and then the Rent is behind,
it shall be that the wife shall have the Rent,

not the Executor, because that the Rent was to the Husband by way of reservation, and the Wife hath the remain of the Terme; but notwithstanding that the wife shall have the Rent, yet she shall not enter for the condition broken, *Causa pater, &c.*

83. If an Abbot doth enfeof a stranger of land, which he hath in the right of his House upon condition, his Successor shall take advantage of the condition by way of entry if it be broken, because that he is privy to the right. The same law is of a Deane and Chapter, and such like persons, *Mutatis mutandis*. And privies in blood, as the heirs of the Feoffor, &c. shall take advantage of conditions Executory by way of entry, &c. And the parties unto the conditions shall take advantage of conditions by way of entry, as in the cases before is shewed. And as it is said of land, so shall it be of things which lie in grant, *Mutatis mutandis*. And where it behoveth such persons to take advantage by way of entry, or to make a demand, *M. Littleton* hath shewed in his third Book his Chapter of Estates upon condition, *Mutatis mutandis*.

40 Aff. p.

11.

M. 4 H. 6.

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T. 20 H. 6.

32.

T. 6 H. 7.

2.

836 And it is to know, That if a man seised of land in fee, doth lease the same for life, or for yeares, reserving ten shilling Rent payable yearly at the Feast of Easter, and if the Rent be behinde in part, or in all by the space of a moneth after any day of payment, in which it ought to be paid, then it shall be lawful for the lessor, and his heirs to re-enter, &c. And the lessor cometh upon the land at the last instant of the day

the feast-day of Easter, and there demandeth
 the Rent (as he ought) if he will take ad-
 vantage of the condition, the lessee is not re- 20 H. 6. 32.
 quired to be upon the land to pay him the Rent,
 but at the last instant of the day on which it
 ought to be paid, and the lessor then is there
 to demand the Rent, and there is no body
 there to pay it unto him, notwithstanding
 this demand, if the lessor will take advan-
 tage of the condition by way of entry, it be-
 hoves him to make the like demand the last
 instant of the day of the moneth, and if he do M. 1 H. 7.
 make such demand, and the lessee is there, or 14.
 other for him ready to pay him the Rent, he
 shall not enter, notwithstanding that there
 was no body ready to pay him when he made
 the first demand: And yet if he had not made
 the first demand, and that there was no body
 ready for to pay him, yet he could not re-en-
 ter, if the lessee or any for him be upon the
 land at the time of any of the demands ready
 to pay the Rent, and doth tender the Rent
 unto him who demandeth the same (as he
 ought to doe,) &c. And if he refuseth it,
 then the lessor, nor any for him can re-en-
 ter. And if (when the first demand was made)
 there was no body for to pay the Rent, and
 the lessee, after the demand, and before the last
 day of the moneth, the lessee doth tender the
 money unto his lessor off the land, and the
 lessor doth refuse the same, and at the latter
 end of the last day of the moneth, the lessor
 doth make another demand of the Rent upon
 the land, and there is no body ready for to
 pay the same, The lessor may re-enter, not-
 withstanding the refusal of the Rent at the

T. 22 H. 6. 67. time of the tender made unto him of the land ; because he was not bounden to receiue the same off the land. Famen quare thereof : But if he had receiued it, then he could not re-enter, notwithstanding that the receipt thereof were off of the land.

837 It meane, after the first demand, and befoze the latter end of the moneth the lessor do happen to come upon the land, and the lessee doth tender unto him being upon the land the rent : It is said that the lessor is bounden for to receiue it, because the Rent was then due, and it was tendered unto him in the place where it ought to be paid, &c.

838 And it is to know, That if a man be letted of a Mansion House, with diuers Pasture Fields, arable lands, and Meadows thereunto appertaining, in fee, and doth lease the House, with all the Fields, and Meadows unto a stranger for life, or for years, reseruing the Rent of ten pounds payable yearly at the Feast of Easter, &c. And for default of payment thereof, That it shall be lawfull for the lessor and his heires to re-enter. In this case, the lessor may distrain in every parcell for the whole Rent : But if he will take advantage of a Re-entry, he ought to demand the Rent at the Mansion-house, because it is parcell of the thing let, and it is the most convenient place for the Lessee to stay, to tender the Rent, &c. And if such lease be made of diuers Fields, and Meadows, without any Mansion-house, If the Lessor will take advantage by re-entry, it becometh him openly to demand the Rent upon parcell of the Lands leased, which by intendment

ment of the Law is as convenient for the Lessee to stay there to be ready to pay the Rent, in any other place parcel of the things let is, and not privately to demand the Rent in one parcel of the Wood. or in other private place of a Field, to the end the Lessee may not have knowledge of the demand, notwithstanding that he be upon the Land ready to pay the Rent, &c.

839 And it is to know, That when Conditions are executed, strangers shall take advantage of them by way of plea, &c. ^{M. 44 E. 1.} As ^{8.} putcase, a man seised of Land, doth thereof enfeoff a stranger upon condition, and afterwards the condition is broken, for which the feoffor doth enter into the land, & doth thereof enfeoff T. K. upon whom the feoffee upon condition doth re-enter: And T. K. doth bring an Assise against him, and the feoffee upon condition doth plead the feoffment simply without any condition, and giveth colour to the Plaintiff, &c. The Plaintiff may plead that the feoffment was made upon condition, and shew the same in certain, and that the feoffor did enter for the condition broken, &c. and did enfeoff him, &c. This is good matter of title, &c. And yet the Plaintiff is a stranger unto the feoffment upon condition, &c.

840 It is commonly said, That when any person doth enter for a condition broken, That he shall be seised in the same manner and course as he was when he did depart with his possession, upon which the condition in fact was made. And therefore, if the Lessee upon a condition in fact of Land doth grant a Rent.

Rent-charge, issuing out of the same land, or doth make a recognisance, or is bounden in a Statute Merchant, or in a Statute Staple, &c. And the Conuſee or Obligor hath the Land whereof the feoffment was made upon condition in execution, and afterwards the condition is broken, for which the feoffor doth enter. The interest and estate of the Conuſee or Obligor is defeated and avoided, and the Land also is discharged of the Rent granted by the feoffee, and yet the condition was broken after the Grant, Recognisance, and Obligation: And the reason is, because he made the feoffment of the land upon a condition expressed in the Deed, discharged of the Rent, and of such execution. And for the condition broken, he may re-enter, and have the land back in the same plight and condition as it was when he did depart with the estate upon condition. Notwithstanding, it doth not follow in every case, That when any person doth enter for a condition in fait broken, That he shall be seised in the same course, and in the same plight and condition as he was when he did depart with the estate unto which the condition was annexed.

841 And therefore if a man seised of Land, doth lease the same unto a stranger for life, and the Lessee for life doth thereof enfeoff a stranger upon condition in fait, and afterwards the condition is broken, and the lessor who is the feoffor doth enter. Now he is not seised in the same plight as he was at the time of the feoffment made, for then the lessor could not enter upon him, and ouster him of his Terme, but now the lessor may enter up-

on him, and put him out of the Terme, for by the feoffment his Lessor had title of entry, which title of entry is not discharged by the re-entry of the lessee for the condition broken, Causa patet.

842 *It* Cestuy que use in fee of certayne ⁴³ Aff. p. Lands doth enter upon his feoffee according to 47. the Stat. of R. 3. in such case provided, and M. 5 H. 7. 5. doth thereof enfeoff a stranger upon condition, that he shall pay unto him ten pounds before the Feast of Michaelmas next following, and the feoffee doth enter for the condition broken, in this case, the use is not revived, for by the feoffment made upon condition, the use was determined and avoided, &c. And if there be disseisor of land and he doth die thereof seised, and his heire is in the same land by descent, and the Disseisor doth enter upon the heire, and put him out of the land, and doth thereof enfeoff a stranger upon condition, and the heire of the Disseisor doth enter upon the feoffee, and the Disseisor doth bring a writ of Entre sur dislin. en le per against the heir of the Disseisor, and doth demand the same land, and doth recover by confession, and hath execution thereof, and the feoffee upon condition doth re-enter upon him, and afterwards the condition is broken, for which the feoffee doth enter. Now the feoffee is not seised in the same course as he was at the time of the feoffment made, for at the same time the heire of the Disseisor might have entred upon him, and put him out of the land: but now he cannot so ¹⁰ Aff. p. 2. do, &c.

843 *It* there be Lord and Tenant, and the Lord doth disseise the Tenant of the tenancy, and

and doth thereof enfeof a stranger upon condition, and afterwards the condition is broken, for which the Lord doth enter, upon whom the Tenant doth enter, the *Deignoz* is not rebid; and yet if the Tenant had entered upon the Lord before the feoffment made by him, the *Deignoz* had been rebid. *Causa pater*. The which probeth that the Lord is not seised in the same course and plight after his entry for the condition broken, as he was at the time of the feoffment made upon condition, &c.

344 And it is commonly said, & when a man doth enter by reason of a condition in Law, That he shall take the land as he finds it; and the same is not so in all Cases. For if a man seised of land doth lease the same for life, there is a condition in law annexed unto the land, viz. That if the lessee doe discontinue the reversion, that the lessor shall enter. And also another condition by Statute-law annexed thereunto, viz. That it shall not be lawful for the lessee to do waste in & land leased, &c. If in such case the lessee doth enfeof a stranger of the land leased, and the Feoffee doth grant a rent-charge out of the same land, and the lessor doth enter upon the feoffee, hee shall hold the land discharged of the Rent, because his title of entry doth commence by the feoffment which was before the grant: But if the lessee had granted the Rent before the feoffment, and then the lessor had entred upon the Feoffee, he should hold the land charged during the life of the lessee, *Causa pater*, &c. And if the lessee had committed waste, and had granted a Rent-charge unto a stranger after the waste done,

and

and the lessor had brought his action of waste, and recovered, the lessor should hold the land discharged of the Rent: But if the grant had been made before the waste done, then he should hold the same charged during the life of the lessee, &c.

845 And if there be Lord and Tenant, and the tenant doth enfeof an Abbot of the tenancy; and the Abbot doth grant a Rent-charge issuing out of the tenancy, and the Lord doth enter within the year and day after the alienation made according to the Statute of Mortmain, the Lord shall hold the tenancy discharged of the Rent granted by the Abbot, &c. But if the Tenant had granted a Rent-charge issuing out of the tenancy before the alienation in Mortmain and the Lord had entered within the year after the alienation, &c. In this case the Lord should have holden the tenancy charged with the Rent, &c. 21 H. 6. 58.

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